

herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming ten years of age and prior to becoming 18 years of age; provided, however:

(i) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 10 but not the age of 14 may be treated as an adult as provided therein;

(ii) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14 but not the age of 16 shall be subject to criminal proceedings as in cases commenced against adults, unless transferred to the court in accordance with the juvenile judicial proceedings chapters;

(iii) that an individual who is alleged to have committed an act before attaining the age of 10 which would be murder as defined in section 2301 of Title 13 if committed by an adult may be subject to delinquency proceedings; and

(iv) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

(4) "Commissioner" means the commissioner of the department for children and families or the commissioner's designee.

(5) "Conditional custody order" means an order issued by the court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the court may deem necessary to provide for the safety and welfare of the child.

(6) "Court" means the Vermont family court.

(7) "Custodial parent" means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child.

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont family or probate court or a similar court in another jurisdiction.

(9) "Delinquent act" means an act designated a crime under the laws of this state, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) Snowmobile offenses in subchapter 1 and motorboat offenses in subchapter 2 of chapter 29 of Title 23, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323.

(B) Motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of subchapter 13 of chapter 13 and of section 1091 of Title 23.

(10) "Delinquent child" means a child who has been adjudicated to have committed a delinquent act.

(11) "Department" means the department for children and families.

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child pursuant to an order of a Vermont probate court or a similar court in another jurisdiction.

(13) "Judge" means a judge of the family court.

(14) "Juvenile judicial proceedings chapters" means this chapter and chapters 52 and 53 of this title.

(15) "Juvenile proceeding" means a proceeding in the family court under the authority of the juvenile judicial proceedings chapters.

(16)(A) "Legal custody" means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(i) The right to routine daily care and control and to determine where and with whom the child shall live.

(ii) The authority to consent to major medical, psychiatric, and surgical treatment for a child.

(iii) The responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care.

(iv) The authority to make decisions which concern the child and are of substantial legal significance, including the authority to consent to marriage and enlistment in the armed forces of the United States, and the authority to represent the child in legal actions.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) "Listed crime" means the same as defined in 13 V.S.A. § 5301.

(18) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) "Officer" means a law enforcement officer, including a state police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the criminal justice training council pursuant to section 2358 of Title 20.

(20) "Parent" means a child's biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both and parents whose rights have never been adjudicated.

(21) "Parent-child contact" means the right of a parent to have visitation with the child by court order.

(22) "Party" includes the following persons:

(A) The child with respect to whom the proceedings are brought.

(B) The custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition.

(C) The noncustodial parent for the purposes of custody, visitation, and such other issues which the court may determine are proper and necessary

to the proceedings, provided that the noncustodial parent has entered an appearance.

(D) The state's attorney.

(E) The commissioner.

(F) Such other persons as appear to the court to be proper and necessary to the proceedings.

(23) "Probation" means the legal status created by order of the family court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the department under conditions specified in the court's juvenile probation certificate and subject to return to and change of legal status by the family court for violation of conditions of probation at any time during the period of probation.

(24) "Protective supervision" means the authority granted by the court to the department in a juvenile proceeding to take reasonable steps to monitor compliance with the court's conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) "Reasonable efforts" means the exercise of due diligence by the department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the court makes written findings that aggravated circumstances are present, the court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

(A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;

(B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;

(C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or

(D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody

of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) "Shelter" means a shelter designated by the commissioner where a child taken into custody pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) "Youth" shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

§ 5103. JURISDICTION

(a) The family court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family court proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c) Except as otherwise provided by this title, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

§ 5104. RETENTION OF JURISDICTION OVER YOUTHFUL OFFENDERS

(a) The family court may retain jurisdiction over a youthful offender up to the age of 22.

(b) In relation to the retention of jurisdiction provision of subsection (a) of this section, any party may request, or the court on its own motion may schedule, a hearing to determine the propriety of extending the jurisdictional

time period. This hearing shall be held within the three-month time period immediately preceding the child's 18th birthday, and the order of continued jurisdiction shall be executed by the court on or before that birthday. In determining the need for continued jurisdiction, the court shall consider the following factors:

- (1) the extent and nature of the child's record of delinquency;
 - (2) the nature of past and current treatment efforts and the nature of the child's response to them;
 - (3) the prospects for reasonable rehabilitation of the child by use of procedures, services, and facilities currently available to the court; and
 - (4) whether the safety of the community will best be served by a continuation of jurisdiction.
- (c) A hearing under subsection (b) of this section shall be held in accordance with the procedures provided in section 5113 of this title.

§ 5105. VENUE AND CHANGE OF VENUE

(a) Proceedings under the juvenile judicial proceedings chapters may be commenced in the county where:

- (1) the child is domiciled;
- (2) the acts constituting the alleged delinquency occurred; or
- (3) the child is present when the proceedings commenced, if it is alleged that a child is in need of care or supervision.

(b) If a child or a parent, guardian, or custodian changes domicile during the course of a proceeding under the juvenile judicial proceedings chapters or if the petition is not brought in the county in which the child is domiciled, the court may change venue upon the motion of a party or its own motion, taking into consideration the domicile of the child and the convenience of the parties and witnesses.

§ 5106. POWERS AND DUTIES OF COMMISSIONER

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the court, and in addition to any other powers granted to the commissioner under the laws of this state, the commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

- (1) To undertake assessments and make reports and recommendations to the court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the commissioner's supervision or in the commissioner's legal custody by order of the court.

(4) To place a child who is in the commissioner's legal custody in a family home or a treatment, rehabilitative, detention, or educational facility or institution subject to the provisions of sections 5292 and 5293 of this title. To the extent that it is appropriate and possible siblings in the commissioner's custody shall be placed together.

(5) To make appropriate referrals to private or public agencies.

(6) To perform such other functions as are designated by the juvenile judicial proceedings chapters.

§ 5107. CONTEMPT POWER

Subject to the laws relating to the procedures therefor and the limitations thereon, the court has the power to punish any person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

§ 5108. AUTHORITY TO ISSUE WARRANTS

(a) The court may order a parent, guardian, or custodian to appear at any hearing or to appear at the hearing with the child who is the subject of a petition.

(b) If, after being summoned, cited, or otherwise notified to appear, a party fails to do so, the court may issue a warrant for the person's appearance. If the child is with the parent, guardian, or custodian, the court may issue a warrant for the person to appear in court with the child or, in the alternative, the court may issue an order for an officer to pick up the child and bring the child to court.

(c) If a summons cannot be served or the welfare of the child requires that the child be brought forthwith to the court, the court may issue a warrant for the parent, guardian, or custodian to appear in court with the child. In the alternative, the court may issue an order for an officer to pick up the child and bring the child to court during court hours.

(d) A person summoned who fails to appear without reasonable cause may be found in contempt of court.

§ 5109. SUBPOENA

Upon application of a party or on the court's own motion, the clerk of the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the juvenile judicial proceedings chapters.

§ 5110. CONDUCT OF HEARINGS

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court, may be admitted by the court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5333 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings.

§ 5111. NONCUSTODIAL PARENTS

(a) If a child is placed in the legal custody of the department and the identity of a parent has not been legally established at the time the petition is filed, the court may order that the mother, the child, and the alleged father submit to genetic testing and may issue an order establishing parentage pursuant to subchapter 3A of Title 15. A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

(b) If a child is placed in the legal custody of the department, the department shall make reasonably diligent efforts to locate a noncustodial parent as early in the proceedings as possible, and notify the court of the noncustodial parent's address. A hearing shall not be delayed by reason of the inability of the department to locate or serve a noncustodial parent.

(c) The court may order a custodial parent to provide the department with information regarding the identity and location of a noncustodial parent.

(d) As soon as his or her address is known, a noncustodial parent shall be served with the petition and a copy of the summons. Thereafter, the court shall mail notices of the hearing to the noncustodial parent. The noncustodial parent shall be responsible for providing the court with information regarding

changes in address.

§ 5112. ATTORNEY AND GUARDIAN AD LITEM FOR CHILD

(a) The court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.

(b) The court shall appoint a guardian ad litem for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters. In a delinquency proceeding, a parent, guardian, or custodian of the child may serve as a guardian ad litem for the child, providing his or her interests do not conflict with the interests of the child. The guardian ad litem appointed under this section shall not be a party to that proceeding or an employee or representative of such party.

§ 5113. MODIFICATION OR VACATION OF ORDERS

(a) An order of the court may be set aside in accordance with Rule 60 of the Vermont Rules of Civil Procedure.

(b) Upon motion of a party or the court's own motion, the court may amend, modify, set aside, or vacate an order on the grounds that a change in circumstances requires such action to serve the best interests of the child. The motion shall set forth in concise language the grounds upon which the relief is requested.

(c) Any order under this section shall be made after notice and hearing; however, the court may waive the hearing upon stipulation of the parties. All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on the petition.

§ 5114. BEST INTERESTS OF THE CHILD

(a) At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall consider the best interests of the child in accordance with the following:

(1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.

(2) The child's adjustment to his or her home, school, and community.

(3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.

(4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

(b) Except in cases where a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall also consider whether the parent is capable of playing a constructive role, including demonstrating love and affection, in the child's welfare.

§ 5115. PROTECTIVE ORDER

(a) On motion of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if the court finds that such conduct is or may be detrimental or harmful to a child.

(b) The person against whom the order is directed shall be served with notice of the motion and the grounds therefor and be given an opportunity to be heard.

(c) Upon a showing that there is a risk of immediate harm to a child, the court may issue a protective order ex parte. A hearing on the motion shall be held no more than 10 days after the issuance of the order.

(d) The court may review any protective order at a subsequent hearing to determine whether the order should remain in effect.

(e) A person who is the subject of an order issued pursuant to this section who violates a provision of the order that concerns contact between the child and that person shall be punished in accordance with 13 V.S.A. § 1030.

§ 5116. COSTS AND EXPENSES FOR CARE OF CHILD

(a) The commissioner may incur such expenses for the proper care, maintenance, and education of a child, including without limitation, the expenses of medical, surgical, or psychiatric examination or treatment, as the commissioner considers necessary in connection with proceedings under the juvenile judicial proceedings chapters.

(b) The costs of any proceeding under the juvenile judicial proceedings chapters incurred under the provisions of Title 33 shall be borne by the court.

(c) The court may, in any order of disposition under the juvenile judicial proceedings chapters, make and enforce by levy and execution an order of child support to be paid by the parent of the child.

(d) The court may delegate to the office of magistrate its authority to make and enforce an order of child support to be paid by the parent of a child.

(e) A child support order shall only remain in effect as long as the child who is the subject of the support order is in the legal custody of the commissioner and placed with someone other than the parent or parents responsible for support.

(f) Except as otherwise provided in section 5119 of this title, orders issued pursuant to this section shall not be confidential.

(g) Notwithstanding subsection 5103(b) of this title, an order terminating a parent's residual parental rights ends that parent's obligation to pay child support. However, in no event shall an order terminating residual parental rights terminate an obligation for child support arrearages accrued by the parent prior to the date of the termination of parental rights order.

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

(b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:

(A) A court having the child before it in any juvenile judicial proceeding.

(B) The officers of public institutions or agencies to whom the child is committed as a delinquent child.

(C) A court in which a person is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the person, or by officials of penal institutions and other penal facilities to which the person is committed, or by a parole board in considering the person's parole or discharge or in exercising supervision over the person.

(D) Court personnel, the state's attorney or other prosecutor authorized to prosecute criminal or juvenile cases under state law, the child's guardian ad litem, the attorneys for the parties, probation officers, and law

enforcement officers who are actively participating in criminal or juvenile proceedings involving the child.

(E) The child who is the subject of the proceeding, the child's parents, guardian, custodian, and guardian ad litem may inspect such records and files upon approval of the family court judge.

(F) Any other person who has a need to know may be designated by order of the family court.

(2) Records and files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00.

(c) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the court may order that court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding. The public shall not have access to records from a juvenile proceeding that are filed with the court or admitted into evidence in the divorce or parentage proceeding.

(d) Such records and files shall be available to state's attorneys and all other law enforcement officers in connection with record checks and other legal purposes.

(e) Any records or reports relating to a matter within the jurisdiction of the court prepared by or released by the court or the department for children and families, any portion of those records or reports, and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section.

(f) This section does not provide access to records sealed in accordance with section 5119 of this title unless otherwise provided in section 5119.

§ 5118. LIMITED EXCEPTION TO CONFIDENTIALITY OF RECORDS OF JUVENILES MAINTAINED BY THE FAMILY COURT

(a) For the purposes of this section:

(1) "Delinquent act requiring notice" means conduct resulting in a delinquency adjudication related to a listed crime as defined in 13 V.S.A. § 5301(7).

(2) "Independent school" means an approved or recognized independent school under 16 V.S.A. § 166.

(b) While records of juveniles maintained by the family court should be kept confidential, it is the policy of the general assembly to establish a limited exception for the overriding public purposes of rehabilitating juveniles and protecting students and staff within Vermont's public and independent schools.

(c) Notwithstanding any law to the contrary, a court finding that a child has committed a delinquent act requiring notice shall, within seven days of such finding, provide written notice to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster.

(d) The written notice shall contain only a description of the delinquent act found by the court to have been committed by the child and shall be marked: "UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00." The envelope in which the notice is sent by the court shall be marked: "CONFIDENTIAL: TO BE OPENED BY THE SUPERINTENDENT OR HEADMASTER ONLY."

(e) The superintendent or headmaster, upon receipt of the notice, shall inform only those persons within the child's school with a legitimate need to know of the delinquent act, and only after first evaluating rehabilitation and protection measures that do not involve informing staff or students. Persons with a legitimate need to know are strictly limited to only those for whom the information is necessary for the rehabilitation program of the child or for the protection of staff or students. "Need to know" shall be narrowly and strictly interpreted. Persons receiving information from the superintendent or headmaster shall not, under any circumstances, discuss such information with any other person except the child, the child's parent, guardian, or custodian, others who have been similarly informed by the superintendent or headmaster, law enforcement personnel, or the juvenile's probation officer.

(f) The superintendent and headmaster annually shall provide training to school staff about the need for confidentiality of such information and the penalties for violation of this section.

(g) The written notice shall be maintained by the superintendent or headmaster in a file separate from the child's education record. If the child transfers to another public or independent school, the superintendent or headmaster shall forward the written notice in the original marked envelope to the superintendent or headmaster for the school to which the child transferred. If the child either graduates or turns 18 years of age, the superintendent or headmaster then possessing the written notice shall destroy such notice.

(h) If legal custody of the child is transferred to the commissioner, or if the commissioner is supervising the child's probation, upon the request by a superintendent or headmaster, the commissioner shall provide to the

superintendent or headmaster information concerning the child which the commissioner determines is necessary for the child's rehabilitation or for the protection of the staff or students in the school in which the child is enrolled.

(i) A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(j) Except as provided in subsection (i) of this section, no liability shall attach to any person who transmits, or fails to transmit, the written notice required under this section.

§ 5119. SEALING OF RECORDS

(a)(1) In matters relating to a child who has been adjudicated delinquent on or after July 1, 1996, the court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state's attorney, the court finds:

(A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or

(B) rehabilitation of the person has not been attained to the satisfaction of the court.

(2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the court shall provide such person's name and other identifying information to the state's attorney in the county in which the person was adjudicated delinquent. The state's attorney may object, and a hearing may be held to address the state's attorney's objection.

(3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the court may limit the order to the court files and records only upon good cause shown by the state's attorney.

(4) The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 1996, but before July 1, 2001 shall be completed by January 1, 2010. The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 2001 but before July 1, 2004 shall be completed by January 1, 2008.

(b) In matters relating to a child who has been adjudicated delinquent prior to July 1, 1996, on application of the child or on the court's own motion and

after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after such initial adjudication, and no new proceeding is pending seeking such conviction or adjudication; and

(2) the person's rehabilitation has been attained to the satisfaction of the court.

(c) On application of a person who, while a child, was found to be in need of care or supervision or, on the court's own motion, after notice to all parties of record and hearing, the court may order the sealing of all files and records related to the proceeding if it finds:

(1) the person has reached the age of majority; and

(2) sealing the person's record is in the interest of justice.

(d) Except as provided in subdivision (a)(3) and subsection (h) of this section or otherwise provided, orders issued in accordance with this section shall include the files and records of the court, law enforcement, prosecution, and the department for children and families related to the specific court proceeding that is the subject of the sealing.

(e)(1) Except as provided in subdivision (2) of this subsection, upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this act shall be considered never to have occurred, all general index references thereto shall be deleted, and the person, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named in the order.

(2)(A) Any court, agency, or department that seals a record pursuant to an order under this section may keep a special index of files and records that have been sealed. This index shall only list the name and date of birth of the subject of the sealed files and records and the docket number of the proceeding which was the subject of the sealing. The special index shall be confidential and may be accessed only for purposes for which a department or agency may request to unseal a file or record pursuant to subsection (f) of this section.

(B) Access to the special index shall be restricted to the following persons:

(i) the commissioner and general counsel of any administrative department;

- agency;
- (ii) the secretary and general counsel of any administrative
 - (iii) a sheriff;
 - (iv) a police chief;
 - (v) a state's attorney;
 - (vi) the attorney general;
 - (vii) the director of the Vermont crime information center; and

(viii) a designated clerical staff person in each office identified in subdivisions (i)–(viii) of this subdivision (B) who is necessary for establishing and maintaining the indices for persons who are permitted access.

(C) Persons authorized to access an index pursuant to subdivision (B) of this subdivision (2) may access only the index of their own department or agency.

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

(2) Upon a confidential motion of any department or agency that was required to seal files and records pursuant to subsection (d) of this section, the court may permit the department or agency to inspect its own files and records if it finds circumstances in which the department or agency requires access to such files and records to respond to a legal action, a legal claim, or an administrative action filed against the department or agency in relation to incidents or persons that are the subject of such files and records. The files and records shall be unsealed only for the minimum time necessary to address the circumstances enumerated in this subdivision, at which time the records and files shall be resealed.

(3) Upon a confidential motion of the department for children and families, the court may permit the department to inspect its own files and records if the court finds extraordinary circumstances in which the state's interest in the protection of a child clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the state's interest. The motion may be heard ex parte if the court, based upon an affidavit, finds a compelling purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the court shall send notice of the unsealing to the subject of the files and records within 20 days unless the department provides a compelling reason why the subject of the files and records should not receive

notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(4) Upon a confidential motion of a law enforcement officer or prosecuting attorney, the court may permit the department or agency to inspect its own files and records if the court finds extraordinary circumstances in which the state's interest in public safety clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the state's interest. The motion may be heard ex parte if the court, based upon an affidavit, finds a compelling public safety purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the court shall send notice of the unsealing to the subject of the files and records within 20 days unless the law enforcement officer or prosecuting attorney provides a compelling public safety reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

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

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime committed under the laws of this state prior to attaining the age of majority, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

(h)(1) In matters relating to a person who was charged with a criminal offense on or after July 1, 2006 and prior to the person attaining the age of

majority, the files and records of the court applicable to the proceeding shall be sealed immediately if the case is dismissed.

(2) In matters relating to a person who was charged with a criminal offense prior to July 1, 2006 and prior to the person attaining the age of majority, the person may apply to seal the files and records of the court applicable to the proceeding. The court shall order the sealing, provided that two years have elapsed since the dismissal of the charge.

(i) Upon receipt of a court order to seal a record relating to an offense for which there is an identifiable victim, a state's attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a state's attorney pursuant to this subsection shall be available only to victims' advocates, the victims' compensation program, and the victim and shall otherwise be confidential.

(j) For purposes of this section, to "seal" a file or record means to physically and electronically segregate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A "sealed" file or record is retained and shall not be destroyed unless a court issues an order to expunge the record.

(k) The court shall provide assistance to persons who seek to file an application for sealing under this section.

(l) Any entities subject to sealing orders pursuant to this section shall establish policies for implementing this section and shall provide a copy of such policies to the house and senate committees on judiciary no later than January 15, 2007. State's attorneys, sheriffs, municipal police, and the judiciary are encouraged to adopt a consistent policy that may apply to each of their independent offices and may submit one policy to the general assembly.

§ 5120. INDIAN CHILD WELFARE ACT

The federal Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., governs any proceeding under this title that pertains to an Indian child, as defined by the Indian Child Welfare Act, and prevails over any inconsistent provision of this title.

§ 5121. CASE PLANNING PROCESS

The department shall actively engage families, and solicit and integrate into the case plan the input of the child, the child's family, relatives and other persons with a significant relationship to the child. Whenever possible,

parents, guardians and custodians shall participate in the development of the case plan.

§ 5122. MISCONDUCT DURING COURT PROCEEDINGS

A person who engages in misconduct while participating in a court proceeding under chapters 51, 52, or 53 of this title may be subject to appropriate sanctions, including criminal charges, as provided by relevant law, regulation, rule, or employment policy. The confidentiality requirements of subsection 5110(c) of this title shall not apply to the extent necessary to report and respond to allegations of misconduct under chapters 51, 52, and 53 of this title. This section shall not be construed to create a private right of action or a waiver of sovereign immunity.

Second: In Sec. 2, 33 V.S.A. § 5203(e), by striking subdivisions (1), (2), and (3) in their entirety.

Third: In Sec. 2, 33 V.S.A. § 5221(c), after the word “child’s” by inserting the word “custodial”

Fourth: In Sec. 2, 33 V.S.A. § 5223(b), after the word “notice” by inserting the words “,including the noncustodial parent,”

Fifth: In Sec.2, 33 V.S.A. § 5224, after the words “child or” by striking the word “parent” and inserting in lieu thereof the words “custodial parent, guardian, or custodian”

Sixth: In Sec. 2, 33 V.S.A. § 5225, by striking subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(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, guardian, or custodian. On its own motion or motion by the child’s attorney, the court may appoint a guardian ad litem other than a parent, guardian, or custodian.

Seventh: In Sec. 2, 33 V.S.A. § 5230(b)(6), by striking the word “parents” and inserting in lieu thereof the words “parent, guardian, or custodian”

Eighth: In Sec. 2, 33 V.S.A. § 5235, by striking subsection (j) in its entirety and inserting in lieu thereof new subsections (j) and (k) to read as follows:

(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.

(k)(1) The restitution unit may bring an action to enforce a restitution order issued under this section in the superior or small claims court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued in a juvenile proceeding

shall be enforceable in superior or small claims court in the same manner as a civil judgment. Superior and small claims court filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

(2) An action under this subsection may be brought only after the offender reaches 18 years of age, and shall not be subject to any limitations period.

(3) For purposes of this subsection, a restitution order issued in a juvenile proceeding shall not be confidential.

Ninth: In Sec. 2, 33 V.S.A. § 5252, by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) If an officer takes a child who is alleged to be delinquent into custody, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of child's custodial 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.

Tenth: In Sec. 2, 33 V.S.A. § 5252(c), after the word "child's" where it twice appears, by inserting the word "custodial"

Eleventh: In Sec. 2, 33 V.S.A. § 5253(a)(2), after the word "made" by striking the words "without hearing or notice to the custodial parent, guardian, or custodian" and inserting in lieu thereof the words "ex parte"

Twelfth: In Sec.2, by striking § 5254 in its entirety and inserting in lieu thereof a new § 5254 to read as follows:

§ 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 custodial parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify them 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 non custodial parent and provide the noncustodial parent with the emergency care or conditional custody order, notice of the date, hour,

and place of the temporary care hearing and of the right to counsel. If the noncustodial parent cannot be located, the department shall provide to the court, in writing, a summary of the efforts made to locate the parent.

(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 each parent. The attorney may be court appointed in the event the parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent.

Thirteenth: In Sec. 2, 33 V.S.A. § 5255(d), after the words "noncustodial parent" by inserting the words "and his or her attorney"

Fourteenth: In Sec.2, 33 V.S.A., by striking §5256 in its entirety and inserting in lieu thereof a new § 5256 to read as follows:

§ 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 legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child including, in order of preference:

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

(2)(A) Upon a personal appearance and a request by a noncustodial parent for temporary legal custody and upon a determination that parentage is not contested, the noncustodial parent shall present to the court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:

(i) the child's need for a safe, secure, and stable home;

(ii) the child's need for proper and effective care and control; and

(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.

(B) The court shall consider court orders and findings from other proceedings related to the custody of the child.

(C) The court shall transfer legal custody to the noncustodial parent unless the court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:

(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.

(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.

(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.

(D) If the noncustodial parent's request for temporary custody is contested, the court may continue the hearing and place the child in the temporary custody of the department pending further hearing and resolution of the custody issue. Absent good cause shown, the court shall hold a further hearing on the issue within 30 days.

(3) An order transferring temporary legal custody of the child to a relative, provided:

(A) The relative seeking legal custody is a grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or step-sibling of the child.

(B) The relative is suitable to care for the child. In determining suitability, the court shall consider the relationship of the child and the relative and the relative's ability to:

(i) Provide a safe, secure, and stable environment.

(ii) Exercise proper and effective care and control of the child.

(iii) Protect the child from the custodial parent to the degree the court deems such protection necessary.

(iv) Support reunification efforts, if any, with the custodial parent.

(v) Consider providing legal permanence if reunification fails.

(C) In considering the suitability of a relative who is entitled to preferential consideration, the court may order the department to conduct an investigation and file a written report of its findings with the court. The court may place the child in the temporary custody of the department pending such investigation.

(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The court may make such orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.

(5) A temporary care order transferring temporary legal custody of the child to the commissioner.

(c) If the court transfers legal custody of the child, the court shall issue a written temporary care order.

(1) 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. If 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.

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

(A) Conditions of release.

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

(C) Requiring the department to provide the child with services if legal custody has been transferred to the commissioner.

(D) Requiring the department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities.

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

(F) Requiring the department to make diligent efforts to locate the noncustodial parent.

(G) Requiring the custodial parent to provide the department with names of all potential noncustodial parents and relatives of the child.

(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the commissioner.

Fifteenth: In Sec. 2, 33 V.S.A., by striking § 5258 in its entirety and inserting in lieu thereof a new § 5258 to read as follows:

§ 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.

Sixteenth: In Sec. 2, 33 V.S.A. § 5263(b), after the word "juvenile" where it appears the second time, by striking the words "and the parents or the guardian or custodian of the child, if other than parent" and inserting in lieu thereof the words "and a custodial parent, guardian, or custodian"

Seventeenth: In Sec. 2, 33 V.S.A. § 5263(c), after the words "signature of a" by inserting the word "custodial"

Eighteenth: In Sec. 2, 33 V.S.A. § 5284(b)(2)(A), after the word "offender;" by striking the word "or" and inserting in lieu thereof the word "and"

Nineteenth: In Sec. 2, 33 V.S.A. § 5293(a)(2)(A)(i), after the word "her" by striking the word "parents" and inserting in lieu thereof the words "custodial parent"

Twentieth: By adding a new Sec. 5 to read as follows:

Sec. 5. 33 V.S.A. § 5802 is added to read:

§ 5802. SEPARATION OF VICTIM OF SEXUAL ASSAULT AND PERPETRATOR

The commissioner of the department for children and families shall develop policies applicable when the department knows or learns that a sexual assault perpetrator and his or her victim have been simultaneously placed at the facility. The policies shall include processes and procedures for continued separation of or minimizing incidental contact between the perpetrator and the victim, while ensuring that they both receive educational and other appropriate services.

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

Sec. 6. JUVENILE JURISDICTION POLICY AND OPERATIONS COORDINATING COUNCIL

(a) The juvenile jurisdiction policy and operations coordinating council is established in order to plan and develop the steps advisable to better address age appropriate responses to older youth within the juvenile justice system. The council shall report to the House and Senate Committees on Judiciary on or before December 15, 2008. The report may consider the Juvenile Justice Jurisdiction Study submitted to the agency of human services in December

2007 as well as other relevant information and recommend any changes to Vermont juvenile justice jurisdiction policy the council decides are advisable. With respect to any policy changes recommended, the report shall include:

- (1) Necessary statutory changes;
- (2) Necessary structural modifications to the juvenile system, including personnel and programming requirements and changes; and
- (3) Cost implications and financial impacts.

(b) The Council shall consist of the following members:

- (1) The administrative judge or designee.
- (2) The court administrator or designee.
- (3) The defender general or designee.
- (4) The attorney general or designee.
- (5) The executive director of the department of state's attorney's and sheriffs or designee.
- (6) The commissioner of the department for children and families or designee.
- (7) The director of the juvenile justice commission or designee.
- (8) The commissioner of corrections or designee.
- (9) The commissioner of public safety or designee.

And by renumbering the remaining sections to be numerically correct.

Rep. Haas of Rochester, for the committee on Human Services, recommended that the report of the committee on Judiciary be amended as follows:

First: In Sec. 2, 33 V.S.A. § 5251(2), by striking "52" and inserting "51"

Second: In Sec.2, 33 V.S.A. § 5256(b) after the words "safety of the child" by inserting the words "and the safety of the community,"

Third: In Sec.2, 33 V.S.A. § 5256(b)(1) after the words "to protect the child" by inserting the words "and the community"

Fourth: In Sec.2, 33 V.S.A. § 5256(b)(2)(A)(ii) after the word "control" by inserting the words "sufficient to protect the community"

Fifth: In Sec.2, 33 V.S.A. § 5256(b)(2)(C)(ii) after the words "safety of the child" by inserting the words "or the safety of the community"

Sixth: In Sec.2, 33 V.S.A. § 5256(b)(3)(B)(ii) after the word "child" by inserting the words "sufficient to protect the community"

Seventh: In Sec. 2, after the word "youth" by striking the word "offender"

Eighth: In Sec. 6, subsection (a), by adding new subdivisions (4) and (5) to read:

(4) Review of the impact on 16- and 17-year olds of being commingled with older offenders.

(5) A summary of evidence-based research on outcomes and recidivism rates by juvenile offenders and juvenile delinquents, including comparisons of minors processed as juvenile delinquents with minors processed as adult offenders.

Ninth: In Sec. 6, subsection (b), by adding new subdivisions (10) and (11) to read:

(10) A mental health professional with experience working with juveniles, appointed by the Vermont council of developmental and mental health services.

(11) A law enforcement officer with experience working with juveniles, appointed by the commissioner of public safety.

Tenth: By adding a new Sec. 7 to read as follows:

Sec. 7. REPORT FROM THE DEPARTMENT FOR CHILDREN AND FAMILIES

(a) No later than December 1, 2008, the department for children and families shall report to the general assembly on the following:

(1) Procedures used to identify parents with disabilities.

(2) Procedures for modifying case plans, disposition case plans, service plans and permanency plans to include the use of adaptive equipment and parental supports for parents with disabilities.

(3) Procedures used to assess family strengths and weaknesses as they relate to children and parents with disabilities.

(4) The state's ability to accommodate the court-related needs of children and parents with disabilities as they relate to juvenile judicial proceedings.

(b) In preparation of the report, the department for children and families shall consult with:

(1) The family support project at the University of Vermont.

- (2) The Vermont judiciary.
- (3) The office of the defender general.
- (4) The department of aging and independent living.

And by renumbering the remaining sections to be numerically correct.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposals of amendment offered by the committees on Judiciary and Human Services agreed to and third reading ordered.

Committee of Conference Appointed

H. 709

The House bill, entitled

An act relating to campgrounds;

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

Rep. Wright of Burlington

Rep. Trombley of Grand Isle

Rep. Botzow of Pownal

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:

H. 659

House bill, entitled

An act relating to approval of the adoption of the charter of the town of Enosburg;

H. 892

House bill, entitled

An act relating to approval of amendments to the charter of the village of Enosburg Falls;

H. 893

House bill, entitled

An act relating to approval of amendments to the charter of the city of Rutland.

S. 89

Senate bill, entitled

An act relating to permitting payment of rent into court pursuant to a commercial lease;

S. 368

Senate bill, entitled

An act relating to the addition of new types of disinfectants to public water systems.

S. 107

Senate bill, entitled

An act relating to mapping class four town highways and trails and mass discontinuances of unmapped town highways.

S. 171

Senate bill, entitled

An act relating to discharge of a mortgage by an attorney.

S. 201

Senate bill, entitled

An act relating to state employee whistleblower protection.

S. 283

Senate bill, entitled

An act relating to managed care organizations and the blueprint for health.

S. 313

Senate bill, entitled

An act relating to a license to store and ship wine.

S. 322

Senate bill, entitled

An act relating to the Vermont Dairy Promotion Council.

S. 372

Senate bill, entitled

An act relating to evictions, unpaid rent and abandoned property in rental property.

H. 748

House bill, entitled

An act relating to permitting students to possess and self-administer emergency medication;

H. 889

House bill, entitled

An act relating to the state's transportation program;

H. 891

House bill, entitled

An act making appropriation for the support of government;

J.R.H. 59

Joint resolution, entitled

Joint resolution urging secondary school and post secondary educators and administrators to collaborate on accelerated learning opportunities for Vermont high school students;

Adjournment

At eight o'clock in the evening, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at ten o'clock and thirty minutes in the forenoon.

THURSDAY, APRIL 24, 2008

At ten o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Ralph Howe of Hedding Methodist Church, Barre, VT.

Committee Bill Introduced

H. 896

Rep. Westman of Cambridge, for the committee on Transportation, introduced a bill, entitled

An act relating to balancing the transportation budget and repairing deteriorating roads;

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

Bill Referred to Committee on Appropriations

S. 112

Senate bill, entitled

An act relating to victims compensation;

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

House Resolution Placed on Calendar

The Speaker placed before the House the following resolution which was read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

H.R. 36

House resolution relating to the Connecticut River Valley Flood Control Commission

Offered by: Committee on Ways and Means

Whereas, the state of Vermont entered into the Connecticut River Flood Control Compact along with the states of New Hampshire, Massachusetts, and Connecticut on September 8, 1953, and

Whereas, the Connecticut River Valley Flood Control Commission was created by the compact to provide a joint or common agency through which the signatory states may more effectively cooperate in accomplishing the objective of flood control and water resource utilization in the basin of the Connecticut River and its tributaries, and

Whereas, central to the Compact is the agreement of the down-river states of Connecticut and Massachusetts to reimburse the up-river states of Vermont and New Hampshire for the amount of taxes lost to their political subdivisions by reason of federal ownership of lands, rights, and other property taken for the flood control dams, facilities, and reservoirs in New Hampshire and Vermont, and

Whereas, the compact provides that the Commission determine each year the amount of the tax loss to be reimbursed based on a formula employing the tax rate then current in the municipality applied to the assessed value of the property which may include revaluation resulting from any general revaluation

of the property in the municipalities in which a flood control dam or reservoir or portion thereof is located, and

Whereas, while the compact provides for an annual determination of the amount of tax loss, it appears that no annual determination has been made in the 25 years since the Commission agreed to "freeze" the tax loss amounts in 1982, and

Whereas, while the valuation of the lands in the up-river states in which the flood control facilities, dams, and reservoirs are located has increased enormously in the past quarter century, and the value of the property protected from flood damage in the down-river states has increased even more, it appears that the amount of tax loss payments made to municipalities in Vermont and New Hampshire has not been adjusted accordingly as called for by the compact, now therefore be it

Resolved by the House of Representatives:

That the Connecticut River Valley Flood Control Commission is requested to review the rationale and authority for freezing the amount of tax loss payments since 1982, determine the amount of tax loss payments that would be due based upon current assessments and revaluation of the subject property, and report its findings, determinations, and recommendations to the Vermont General Assembly, and be it further

Resolved: That the clerk of the house be directed to send a copy of this resolution to the Connecticut River Valley Flood Control Commission in Greenfield, Massachusetts, to the selectboards of the municipalities in Vermont affected by the compact including Norwich, Thetford, Hartland, Hartford, Springfield, Weathersfield, Jamaica, Townshend, and Londonderry and to the Vermont Congressional Delegation.

Remarks Journalized

On motion of **Rep. Evans of Essex**, the following remarks by **Rep. Donna Sweaney of Windsor** were ordered printed in the Journal:

"Madam Speaker:

I want to thank the General Assembly for the honor bestowed on me as Woman Legislator of the Year. My name appears on a beautiful plaque with outstanding people like Karen Kitzmiller, Marion Milne and Gaye Symington. Not only do I stand with these women but the outstanding women nominated for this honor, Avis Gervais, Helen Head, Martha Heath, Sue Minter and Alice Nitka.

Any success I have here I also owe to my mentor and friend Rep. Cola Hudson. He once told me that a committee chair only has power that he/she derives from the committee members. I do have a wonderful committee.

I am proud to serve among all the amazing women members of this House and Senate as well as the wonderful men who sit beside us and support us.

Thank you so very much for your generosity.”

Committees of Conference Appointed

Pursuant to the request of the Senate for Committees of Conference on the disagreeing votes of the two Houses on bills of the following titles, the Speaker appointed members of such Committees on the part of the House as follows:

S. 241

An act relating to the special veteran and gold star registration plates;

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

Rep. Masland of Thetford

Rep. Scheuermann of Stowe

Rep. Fitzgerald of St. Albans City

S. 342

An act relating to Lake Champlain commemorative motor vehicle plates;

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

Rep. Brennan of Colchester

Rep. Potter of Clarendon

Rep. Audette of South Burlington

Proposal of Amendment Agreed to; Third Reading Ordered

S. 281

Rep. Frank of Underhill, for the committee on Human Services, to which had been referred Senate bill, entitled

An act relating to end-of-life care and pain management;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. STUDY AND REPORT ON PALLIATIVE CARE, END-OF-LIFE CARE, AND PAIN MANAGEMENT

(a) The office of the attorney general, in cooperation with the departments of health and of disabilities, aging, and independent living, shall convene and lead a group of stakeholders to discuss and make recommendations on legislative and non-legislative solutions for improving:

- (1) palliative care,
- (2) end-of-life care,
- (3) management of chronic pain, and
- (4) access to these services for children.

(b) Participants shall include:

- (1) the Vermont Program for Quality in Health Care;
- (2) the Hospice and Palliative Care Council of Vermont;
- (3) the Vermont health care ombudsman;
- (4) the Vermont long-term care ombudsman;
- (5) Patient Choices at End of Life – Vermont;
- (6) the Vermont Alliance for Ethical Healthcare;
- (7) the Community of Vermont Elders;
- (8) the Vermont Ethics Network;
- (9) the Vermont Health Care Association;
- (10) the Vermont Association of Hospitals and Health Systems;
- (11) the Vermont Medical Society;
- (12) the Vermont Coalition on Disability Rights;
- (13) the American Cancer Society;
- (14) AARP Vermont;
- (15) one representative appointed by the speaker of the house and one senator appointed by the president pro tempore; and
- (16) other interested stakeholders.

(c) The group shall consider:

(1) available data and studies from existing sources and evaluate their utility for driving improvements in palliative care, end-of-life care, and pain management services across settings in this state;

(2) the value and feasibility of conducting ongoing studies or preparing an annual report card, or both;

(3) recommendations for improving ongoing coordination of activities directed toward improving palliative care, end-of-life care, and pain management services throughout the state;

(4) how best to protect the interests of persons who:

(A) have a terminal illness,

(B) are receiving hospice care, or

(C) are suffering chronic pain;

(5) how to advance the goal of improving health care services for children with painful or life-threatening medical conditions, including:

(A) the current availability of insurance coverage for pediatric palliative care services and treatment for chronic pain, and

(B) avenues for increasing children's access to care;

(6) recommendations for improving methods of informing consumers about options in this state for end-of-life care, palliative care, and management of chronic pain, and about the importance of having an advance directive, including means to ensure that:

(A) persons suffering from chronic pain are aware of their right to request or reject the use of all medications, and

(B) persons with a terminal illness are informed about their end-of-life care options;

(7) recommendations on the adoption and implementation of statewide standards on pain management for each of the health care professions licensed in this state; and

(8) such other issues as the group determines necessary and appropriate.

(d) No later than January 15, 2009, the stakeholders' group shall provide a written progress report on its initial findings and recommendations, including the appropriateness of an annual report card, to the house committees on human services and on health care and the senate committee on health and welfare. No later than December 15, 2009, the group shall provide a final report on its findings and recommendations, including recommendations on the

group's continued duration and future activities, to the house committees on human services and on health care and the senate committee on health and welfare.

Rep. Hunt of Essex, for the committee on Appropriations, recommended the bill ought to pass in concurrence when amended as recommended by the committee on Human Services and when further amended follows:

In Sec. 1 by adding a new (e) to read:

(e) Participants of the stakeholders group established by this act who are members of the General Assembly are entitled to receive per diem compensation and reimbursement of expenses as provided by 2 V.S.A. §406.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment offered by the committees on Human Services and Appropriations agreed to and third reading ordered.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 168

Rep. Jewett of Ripton, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to operating a motor vehicle under the influence of alcohol or drugs;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 23 V.S.A. § 1130a is added to read:

§ 1130A. PERMITTING UNDULY DANGEROUS PERSON TO OPERATE

(a) No person shall knowingly and voluntarily permit a motor vehicle owned by him or her or under his or her control to be operated by a person:

(1) whom the person permitting the operation knows or should know is under the influence of alcohol or drugs; or

(2) whose license or privilege to operate a motor vehicle has been revoked, suspended or refused by the commissioner of motor vehicles for a violation of subsections 1091(b) or section 1201 or a suspension under section 1205 of this title, if the person permitting the operation knows of the revocation, suspension, or refusal.

(b) Except as provided in subsection (c) of this section, a person who violates subsection (a) of this section shall be fined not more than \$1,000.00.

(c) A person who violates subsection (a) of this section shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both, if the person who was permitted to operate the vehicle causes an accident which results in death or serious bodily injury as defined in 13 V.S.A. § 1021(2) to any person other than the operator. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

(d) For purposes of this section, a person may assert as an affirmative defense a necessity defense, including that threat or coercion was used by the operator to obtain permission from the person to operate the motor vehicle.

Sec. 2. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

* * *

(2) "Drug" means:

(A) a regulated drug as defined in section 4201 of Title 18; or

(B) any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person as to noticeably and appreciably impair a person's ability to safely drive a vehicle in the manner that an ordinarily prudent and cautious person, in full possession of his or her faculties, using reasonable care, would drive a similar vehicle under like conditions.

* * *

Sec. 3. ALCOHOL IGNITION INTERLOCKS STUDY: MULTIPLE DUI
AND HIGH BLOOD-ALCOHOL-CONTENT FIRST OFFENSE
DUI

(a) The Vermont sentencing commission shall study the issue of implementing a system of alcohol ignition interlocks in Vermont for persons with multiple DUI convictions, as well as for first time DUI offenders with high blood-alcohol-content levels at the time of arrest. The commission may consult with any other persons and entities able to assist the study, and shall:

(1) gather and analyze information about alcohol ignition interlock systems, and review current practices regarding use of the systems in other states;

(2) study the feasibility of having the costs of alcohol ignition interlock systems be borne by DUI offenders;

(3) study the net costs of implementing an alcohol ignition interlock system in Vermont, including the availability of federal funding for that purpose; and

(4) study the advisability and feasibility of implementing a system of conditional drivers licenses in Vermont.

(b) The commission shall report its findings and make recommendations to the senate and house committees on judiciary no later than December 15, 2008.

Sec. 4. LAW ENFORCEMENT ROADSIDE ACCESS TO DEPARTMENT OF CORRECTION RECORDS

The department of public safety, the department of corrections, and the department of motor vehicles shall collaborate to develop and implement procedures allowing law enforcement officers roadside access to department of corrections records, including records regarding probation, parole, and conditions of release. The departments shall make a report to the senate and house committees on judiciary no later than December 15, 2008.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary? **Rep. Koch of Barre Town** moved to amend the House proposal of amendment as follows:

First: In Sec. 1, 23 V.S.A. § 1130a(a)(1), after the words "alcohol or" by striking the word "drugs" and inserting in lieu thereof the words "one or more drugs as defined in subdivision 1200(2) of this title"

Second: In Sec. 2, 23 V.S.A. § 1200(2), by striking subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person so as to impair, noticeably and appreciably, a person's ability to drive a vehicle safely.

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary? **Rep. Courcelle of Rutland City** moved to amend the House proposal of amendment as follows:

In Sec. 3 (a) (4), after the word "Vermont" by inserting the words ", and the advisability of lowering the .04 blood alcohol limit on commercial driver's licenses"

Which was agreed to.

Thereupon, the House proposal of amendment offered by the committee on Judiciary, as amended, was agreed to and third reading was ordered.

**Proposal of Amendment Agreed to; Bill Read Third Time
and Passed in Concurrence With Proposal of Amendment**

S. 114

Senate bill, entitled

An act relating to enhancing mental health parity

Was taken up, and pending third reading of the bill, **Rep. Fisher of Lincoln** moved to amend the House proposal of amendment as follows:

By amending the title of the bill to read as follows:

"AN ACT RELATING TO ENHANCING REGULATION OF MENTAL HEALTH SERVICES"

Which was agreed to.

Pending third reading of the bill **Rep. Donahue of Northfield** moved to amend the House proposal of amendment as follows:

By striking Sec. 1, subsection ~~(d)~~(e), in its entirety and inserting in lieu thereof the following:

(d)(e) A Notwithstanding the provisions of subdivision (c)(1) of this section, a health insurance plan shall be construed to be in compliance with this section if at least one choice for treatment of mental health conditions provided to the insured within the plan has rates, terms and conditions that place no greater financial burden on the insured than for access to treatment of physical other health conditions, provided that a health insurance plan that uses management of care for an insured for treatment of mental health and other health conditions shall not place, or permit an affiliate to place, any greater burden on the insured's access to treatment for mental health conditions than it does on access to treatment for the majority of other specialty care under the plan. The commissioner may adopt rules requiring health insurers to demonstrate compliance with this subsection and may disapprove any plan that the commissioner determines to be inconsistent with the purposes of this section.

Which was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Proposal of Amendment Agreed to; Bill Read the Third Time and Passed
in Concurrence With Proposal of Amendment**

S. 336

Senate bill, entitled

An act relating to juvenile judicial proceedings;

Was taken up, and pending third reading of the bill, **Rep. Flory of Pittsford** moved to amend the House proposal of amendment as follows:

By adding a new Sec. 8 to read as follows:

Sec. 8. 33 V.S.A. chapter 53 is added to read:

**CHAPTER 53. CHILDREN IN NEED OF CARE
OR SUPERVISION**

§ 5301. Taking into custody

A child may be taken into custody:

(1) Pursuant to an order of the family court under the provisions of this chapter.

(2) By an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal is necessary for the child's protection.

(3) By an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.

§ 5302. Request for Emergency Care Order

(a) If an officer takes a child into custody pursuant to subdivisions 5301(1) and (2) of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home, the officer shall:

(1) Remove the child from the child's surroundings, contact the department, and deliver the child to a location designated by the department. The department shall have the authority to make reasonable decisions

concerning the child's immediate placement, safety and welfare pending the issuance of an emergency care order.

(2) Prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the state's attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer if the department has additional information with respect to the child or the family.

(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 custodial 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 custodial parent, guardian, or custodian. If an order is granted, the state's attorney shall file the supporting affidavit with the 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 immediate return of the child to the child's custodial parent, guardian, or custodian.

§ 5303. Procedure for runaway children

(a) If an officer takes a child into custody pursuant to subdivision 5301(3) of this title, the officer shall deliver the child to:

(1) the child's custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) a shelter designated by the department pursuant to section 5304 of this title as qualified to assist children who have run away for the purpose of reuniting them with their parents, guardian, or legal custodian.

(b) Upon delivery of a child to a shelter, the shelter program director or his or her designee, shall notify the child's parents, guardian, or custodian that the child has been taken into custody and make reasonable efforts to mediate the differences between the parties.

(c) A child may remain at a designated shelter for a period not to exceed seven days.

(d) Upon expiration of the seven-day period or sooner at the request of the child or the custodial parent:

(1) the child shall be released to his or her custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) an officer shall seek an emergency care order pursuant to section 5302 of this title.

(e) Unless otherwise ordered by the court, the custody status of the child shall remain the same during the period of time the child is at the shelter.

§ 5304. DESIGNATED SHELTERS FOR RUNAWAY CHILDREN

The commissioner shall designate shelters throughout the state where a child taken into custody pursuant to subdivision 5301(3) of this title may be housed for a period not to exceed seven days.

§ 5305. EMERGENCY CARE ORDER; CONDITIONAL CUSTODY ORDER

(a) Transfer of temporary custody. If the court determines that the child's continued residence in the home is contrary to the child's welfare, the court may issue an emergency care order transferring temporary custody of the child to the department pending a temporary care hearing. The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with section 5302 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 5307 of this title; and

(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 subject to such conditions and limitations necessary and sufficient to protect the child pending a temporary care hearing, the court may deny the request for an emergency care order and issue an emergency conditional custody order.

An emergency conditional custody order shall contain the date, hour, and place of the temporary care hearing and notice of a parent's right to counsel at the hearing.

§ 5306. 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 custodial parent or cause them to be notified of the order, the date, the 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 parents.

(b) Notice to noncustodial parent. The department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care order or conditional care order, notice of the date, hour, and place of the temporary care hearing, and right to counsel. If the noncustodial parent cannot be located, the department shall provide to the court, in writing, a summary of the efforts made to locate the parent.

(c) Failure to locate. The hearing shall not be delayed by reason of not being able to locate either the custodial or noncustodial parent.

(d) 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) A representative of the department.

(3) An attorney to represent the child.

(4) A guardian ad litem for the child.

(5) An attorney to represent each parent. The attorney may be court-appointed in the event the parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent.

§ 5307. 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 5305 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 5306 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, he or she shall file a petition in accordance with section 5308 of this title prior to the temporary care hearing. If the state's attorney elects not to file a petition, he or she shall so notify the court and the court shall vacate the emergency care order and order the return of the child to the custodial parent, guardian, or custodian.

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

(1) The child, unless the child is under 10 years of age and the presence of the child is waived by the child's attorney. For good cause shown, the court may waive the presence of a child who is 10 years of age or older.

(2) The child's custodial parent, guardian, or custodian, unless the parent, guardian, or custodian 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) The department.

(7) The state's attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing; however, 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 subsection 5302(b) 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 custodial parent, guardian, or custodian.

(5) The identity and location of a noncustodial parent, a relative, or 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, in writing, a summary of the efforts made to locate the parent.

(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 of the child from the home and the child's temporary legal custody.

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

§ 5308. TEMPORARY CARE ORDER

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

(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(2) The child or another child residing in the same household has been physically or sexually abused by a parent, guardian, or custodian, or by a member of the child's household, or another person known to the parent, guardian, or custodian.

(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a parent, guardian, or custodian, or by a member of the child's household, or another person known to the parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(A) a parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(B) the parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(4) The custodial parent, guardian, or guardian has abandoned the child.

(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.

(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 legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child including, in order of preference:

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

(2)(A) Upon a personal appearance and a request by a noncustodial parent for temporary legal custody and upon a determination that parentage is not contested, the noncustodial parent shall present to the court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:

(i) the child's need for a safe, secure, and stable home;

(ii) the child's need for proper and effective care and control; and

(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.

(B) The court shall consider court orders and findings from other proceedings related to the custody of the child.

(C) The court shall transfer legal custody to the noncustodial parent unless the court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:

(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.

(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the

noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.

(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.

(D) If the noncustodial parent's request for temporary custody is contested, the court may continue the hearing and place the child in the temporary custody of the department pending further hearing and resolution of the custody issue. Absent good cause shown, the court shall hold a further hearing on the issue within 30 days.

(3) An order transferring temporary legal custody of the child to a relative, provided:

(A) The relative seeking legal custody is a grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or step-sibling of the child.

(B) The relative is suitable to care for the child. In determining suitability, the court shall consider the relationship of the child and the relative and the relative's ability to:

(i) Provide a safe, secure, and stable environment.

(ii) Exercise proper and effective care and control of the child.

(iii) Protect the child from the custodial parent to the degree the court deems such protection necessary.

(iv) Support reunification efforts, if any, with the custodial parent.

(v) Consider providing legal permanence if reunification fails.

(C) In considering the suitability of a relative who is entitled to preferential consideration, the court may order the department to conduct an investigation and file a written report of its findings with the court. The court may place the child in the temporary custody of the department pending such investigation.

(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The court may make such orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.

(5) A temporary care order transferring temporary legal custody of the child to the commissioner.

(c) If the court transfers legal custody of the child, the court shall issue a written temporary care order.

(1) 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. If 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.

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

(A) Establishing parent-child contact under such terms and conditions as are necessary for the protection of the child.

(B) Requiring the department to provide the child with services.

(C) Requiring the department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities.

(D) Requiring genetic testing if parentage of the child is at issue.

(E) Requiring the department to make diligent efforts to locate the noncustodial parent.

(F) Requiring the custodial parent to provide the department with names of all potential noncustodial parents and relatives of the child.

(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the commissioner.

§ 5309. FILING OF A PETITION

(a) The state's attorney having jurisdiction shall prepare and file a petition alleging that a child is in need of care or supervision upon the request of the commissioner or, in the event the child is truant from school, upon the request of the superintendent of the school district in which the child is enrolled or resides. If the state's attorney fails to file a petition within a reasonable amount of time, the department or the superintendent of the school district may request that the attorney general file a petition on behalf of the department.

(b) If the court has issued an emergency care order placing the child who is the subject of the petition in the temporary legal custody of the department or has issued a conditional custody order, the state's attorney shall file the petition on or before the date of the temporary care hearing.

(c) A petition may be withdrawn by the state's attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

(d) Upon the request of the agency of human services, the state's attorney may file a petition pursuant to subsection (a) of this section alleging that a 16- to 17.5-year-old youth who is not in the custody of the state is a child in need of care or supervision under subdivision 5102(2)(B)(ii) of this title when the child meets the criteria set forth in subdivision 5102(2)(B)(ii) of this title. The petition shall be accompanied by a report from the department which sets forth facts supporting the specific requirements of subdivision 5102(2)(C) of this title and that it is in the best interests of the child to be considered as a child in need of care or supervision.

§ 5310. PETITION, CONTENTS

(a) The petition shall be supported by an affidavit of an officer or the department.

(b) The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child is a child in need of care or supervision 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, the custodial and noncustodial parents, 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.

(3) Jurisdictional information required pursuant to the Uniform Child Custody Jurisdiction Act, 15 V.S.A. § 1032 et seq.

§ 5311. SERVICE OF SUMMONS AND PETITION; NO REQUEST FOR TEMPORARY CARE ORDER; PRELIMINARY HEARING

(a) When the state's attorney files a petition but does not request a temporary care order, the court shall set a date for a preliminary hearing on the petition no later than 15 days from the date the petition is filed and issue a judicial summons addressed to the custodial parent, guardian, custodian, or care provider. A copy of the petition shall be attached to the summons. The court shall make reasonably diligent efforts to serve a noncustodial parent with a copy of the summons and petition.

(b) The summons shall contain:

(1) The name and address of the person to whom the notice is directed.

(2) The date, time, and place for the preliminary hearing on the petition.

(3) The name of the minor on whose behalf the petition has been brought.

(4) Notice of a parent's right to counsel.

(5) A statement that the parent, guardian or custodian may be liable for the cost of the support of a child if the child is placed in the legal custody of the department.

(6) An order directing the parent, guardian, custodian, or care provider to appear at the hearing with the child.

(c) The summons and petition may be served by mailing a copy by certified mail return receipt requested to the child and to the child's parent, guardian, custodian, or care provider. Service of the summons and petition may also be

made by any sheriff, deputy, or constable. The court shall provide a copy of the summons to the state's attorney and a copy of the summons and petition to the department and the attorney for the child.

(d) Notice and a copy of the petition shall be served on 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.

(e) A party may waive service of the petition and notice by written stipulation or by voluntary appearance at the hearing.

(f) Once a parent, guardian, or custodian has been served, the court shall provide notice of hearing either directly or by mail. The parent shall be responsible for providing the court with information regarding any changes in address.

§ 5312. FAILURE TO APPEAR AT PRELIMINARY HEARING

(a) If a parent, guardian, or custodian has been served by certified mail with the petition and notice of hearing and fails to appear at the preliminary hearing, the court may order that the parent, guardian, or custodian be served with a judicial summons ordering the person to appear in court with the child at a specified date and time.

(b) If, after being summoned to appear, the parent, guardian, or custodian fails to appear or fails to bring the child to court as ordered, the court may issue a pick-up order or warrant pursuant to section 5108 of this title.

§ 5313. TIMELINES FOR PRETRIAL AND MERITS HEARING

(a) Pretrial hearing. At the time of the temporary care hearing or at the preliminary hearing on the petition if there is no request for temporary legal custody, the court shall set a pretrial hearing on the petition. The hearing shall be held within 15 days of the temporary care hearing or the preliminary hearing. In the event that there is no admission or dismissal at or before the pretrial hearing, the court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) Merits hearing. If the child who is the subject of the petition has been removed from the legal custody of the custodial parent, guardian, or custodian pursuant to a temporary care order, a merits hearing shall be held and merits adjudicated no later than 60 days from the date the temporary care order is issued. In all other cases, merits shall be adjudicated in a timely manner in the best interests of the child.

§ 5314. FILING OF INITIAL CASE PLAN

(a) If a temporary care order is issued transferring legal custody of the child 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 removal of a child from 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 a child is in need of care or supervision.

§ 5315. MERITS ADJUDICATION

(a) At a hearing on the merits of a petition, the state shall have the burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the court may make findings by clear and convincing evidence.

(b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.

(c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the court as a finding of fact at a contested merits hearing provided that a witness who testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.

(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, the court shall dismiss the petition and vacate any temporary orders in connecting with this proceeding.

(g) If the court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the court shall order the department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing.

(h) The court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the court pursuant to section 5314 of this title.

§ 5316. DISPOSITION CASE PLAN

(a) The department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no later than 28 days from the date of the finding by the court that a child is in need of care or supervision.

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

(1) A permanency goal. The long-term goal for a child found to be in need of care and supervision 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 custodial parent, guardian, or custodian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

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

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

(4) An assessment of the family's strengths and risk factors, including a consideration of the needs of children and parents with disabilities.

(5) A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing the changes.

(6) A recommendation with respect to legal custody for the child and a recommendation for parent-child contact and sibling contact, if appropriate.

(7) A plan of services that shall describe the responsibilities of the child, the parents, guardian, or custodian, the department, other family members, and treatment providers including a description of the services required to achieve the permanency goal. The plan shall also address the minimum frequency of contact between the social worker assigned to the case and the family.

(8) A request for child support.

(9) Notice to the parents that failure to substantially accomplish the objectives stated in the plan within the time frames established may result in termination of parental rights.

§ 5317. DISPOSITION HEARING

(a) Timeline. A disposition hearing shall be held no later than 35 days after a finding that a child is in need of care and supervision.

(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 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 termination shall be clear and convincing evidence. 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 at disposition terminating the parental rights of one or both parents and transfer of legal 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 on 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 home.

§ 5318. DISPOSITION ORDER

(a) Custody. At disposition, the court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the court determines are in the best interest of the child, including:

(1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. Following disposition, the court may issue a conditional custody order for a fixed period of time not to exceed two years. The court shall schedule regular review hearings to determine whether the conditions continue to be necessary.

(2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. Following disposition, the court may issue a conditional custody order for a fixed period of time not to exceed two years. The court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the juvenile court are necessary.

(3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the court's own motion, the court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the child.

(4) An order transferring legal custody to the commissioner.

(5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the commissioner without limitation as to adoption.

(6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to periodic review as determined by the court.

(b) Case plan. If the court orders the transfer of custody pursuant to subdivision (a)(2), (4), or (5) of this section, the court shall establish a permanency goal for the minor child and adopt a case plan prepared by the department which is 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.

(c) Sixteen- to 17.5-year olds. In the event that custody of a 16- to 17.5-year old is transferred to the department pursuant to a petition filed under subsection 5309(d) of this title services to the child and to his or her family shall be provided through a coordinated effort by the agency of human services, the department of education, and community-based interagency teams.

(d) Modification. A disposition order is a final order which may only be modified based on the stipulation of the parties or pursuant to a motion to modify brought under section 5113 of this title.

(e) Findings. Whenever the court orders the transfer of legal custody to a noncustodial parent, a relative, or a person with a significant relationship with

the child, such orders shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement.

§ 5319. PARENT-CHILD CONTACT AND CONTACT WITH SIBLINGS AND RELATIVES

(a) The court shall order parent-child contact unless the court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The court may determine the reasonable frequency and duration of parent-child contact and may set such conditions for parent-child contact as are in the child's best interests including whether parent-child contact should be unsupervised or supervised.

(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the court's own motion pursuant to section 5113 of this title.

(d) The court may terminate a parent-child contact order in a juvenile proceeding upon a finding that:

(1) a parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent's failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or

(2) continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.

(e) Upon motion of the child's attorney, the court may also order contact between the child and the child's siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.

(f) Failure to provide parent-child contact due to the child's illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the department.

§ 5320. POST-DISPOSITION REVIEW HEARING

If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress

under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding.

§ 5321. PERMANENCY HEARING

(a) Purpose. Unless otherwise specified therein, an order under the authority of this chapter transferring legal custody or residual parental rights and responsibilities of a child to the department pursuant to subdivision 5318(a)(4) or (5) of this title shall be for an indeterminate period and shall be subject to periodic review at a permanency hearing. At the permanency hearing, the court shall determine the permanency goal for the child and an estimated time for achieving that goal. The goal shall specify when:

(1) legal custody of the child will be transferred to the parent, guardian, or custodian;

(2) the child will be released for adoption;

(3) a permanent guardianship will be established for the child;

(4) a legal guardianship will be established for the child pursuant to an order under chapter 111 of Title 14; or

(5) the child will remain in the same living arrangement or be placed in another planned permanent living arrangement because the commissioner has demonstrated to the satisfaction of the court a compelling reason that it is not in the child's best interests to:

(A) return home;

(B) have residual parental rights terminated and be released for adoption; or

(C) be placed with a fit and willing relative or legal guardian.

(b) The court shall adopt a case plan designed to achieve the permanency goal.

(c) A permanency review hearing shall be held no less than every 12 months with the first hearing to be held 12 months after the date the legal custody of the child was transferred, subject to the following exceptions:

(1) If the child was three years of age or younger at the time of the initial transfer of legal custody, the court may order that permanency review hearings be held as frequently as every three months.

(2) If the child is between the ages of three and six at the time of the initial transfer of legal custody, the court may order that permanency review hearings be held as frequently as every six months.

(d) If the court shortens the time for the permanency review hearing for a younger sibling, that shortened review interval shall be applied to all siblings in the family who are in the legal custody of the department.

(e)(1) The department shall file with the court a notice of permanency review together with a case plan and recommendation for a permanency goal. The department shall provide notice to the state's attorney having jurisdiction and to all parties to the proceeding in accordance with the rules for family proceedings. The court shall hold a permanency review hearing within 30 days of the filing of notice by the department. Failure to give such notice or to review an order shall not terminate the original order or limit the court's jurisdiction.

(2) A foster parent, preadoptive parent, or relative caregiver for the child shall be provided notice of and an opportunity to be heard at any permanency hearing held with respect to the child. Nothing in this subsection shall be construed as affording such person party status in the proceeding.

(f) All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value even though not competent at an adjudication hearing.

(g) The permanency hearing may be held by an administrative body appointed or approved by the court. The administrative body may consist of one but not more than three persons. No person employed by the department shall be a member of the administrative body. In the event that the administrative body determines that the existing order should be altered, it shall submit its recommendation to the court for its consideration. In the event that the administrative body determines that the existing order should not be altered, its determination shall be binding unless any party requests review by the court within ten days of receipt of the determination. A copy of the determination shall be sent to each party and to the court. The court, on its own motion or on the request of any party, shall conduct a review de novo within 30 days of receipt of such request.

(h) Upon the filing of a petition for a finding of reasonable efforts and a report or affidavit by the department for children and families with notice to all parties, the court shall hold a hearing within 30 days of the filing of the petition to determine, by a preponderance of the evidence, whether the department for children and families has made reasonable efforts to finalize the permanency plan for the child that is in effect at the time of the hearing. The hearing may

be consolidated with or separate from a permanency hearing. Reasonable efforts to finalize a permanency plan may consist of:

(1) reasonable efforts to reunify the child and family following the child's removal from the home, where the permanency plan for the child is reunification; or

(2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

**§ 5322. PLACEMENT OF A CHILD IN A FACILITY USED FOR
TREATMENT OF DELINQUENT CHILDREN**

A child found by the court to be a child in need of care and supervision shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Third Reading; Bill Passed in Concurrence
with Proposal of Amendment**

S. 354

Senate bill, entitled

An act relating to public agency deferred compensation plans.

Was taken up, read the third time and passed in concurrence with proposal of amendment.

Third Reading; Bill Passed in Concurrence

S. 361

Senate bill, entitled

An act relating to authority to lease the state lottery.

Was taken up, read the third time and passed in concurrence.

Third Reading; Bill Passed in Concurrence

S. 373

Senate bill, entitled

An act relating to full funding of decommissioning costs of a nuclear plant;

Was taken up and read the third time.

Pending the question, Shall the bill pass in concurrence? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass in concurrence? was decided in the affirmative. Yeas, 82. Nays, 60.

Those who voted in the affirmative are:

Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City
Aswad of Burlington
Atkins of Winooski
Bissonnette of Winooski
Botzow of Pownal
Bray of New Haven
Browning of Arlington
Chen of Mendon
Cheney of Norwich
Clarkson of Woodstock
Consejo of Sheldon
Copeland-Hanzas of
Bradford
Courcelle of Rutland City
Davis of Washington
Deen of Westminster
Donovan of Burlington
Dostis of Waterbury
Edwards of Brattleboro
Emmons of Springfield
Fallar of Tinmouth
Fisher of Lincoln
Frank of Underhill
French of Randolph
Godin of Milton
Grad of Moretown

Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howard of Rutland City
Hunt of Essex
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Kitzmiller of Montpelier
Klein of East Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Manwaring of Wilmington
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford
McCormack of Rutland City
McCullough of Williston
Milkey of Brattleboro
Miller of Shaftsbury

Minter of Waterbury
Mitchell of Barnard
Mook of Bennington
Moran of Wardsboro
Mrowicki of Putney
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
Ojibway of Hartford
Orr of Charlotte
Partridge of Windham
Pearson of Burlington
Pellett of Chester
Peltz of Woodbury
Peterson of Williston
Potter of Clarendon
Randall of Troy
Rodgers of Glover
Shand of Weathersfield
Sharpe of Bristol
Smith of Morristown
Spengler of Colchester
Stevens of Shoreham
Sweaney of Windsor
Trombley of Grand Isle
Zenie of Colchester
Zuckerman of Burlington

Those who voted in the negative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Allard of St. Albans Town
Audette of S. Burlington
Baker of West Rutland
Barnard of Richmond
Bostic of St. Johnsbury
Branagan of Georgia
Canfield of Fair Haven

Clark of Vergennes
Clerkin of Hartford
Condon of Colchester
Corcoran of Bennington
Crawford of Burke
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield
Errecart of Shelburne
Evans of Essex

Fitzgerald of St. Albans City
Flory of Pittsford
Gervais of Enosburg
Gilbert of Fairfax
Grenier of St. Johnsbury
Helm of Castleton
Howrigan of Fairfield
Hube of Londonderry
Johnson of Canaan
Keenan of St. Albans City

Keogh of Burlington	Marcotte of Coventry	Otterman of Topsham
Koch of Barre Town	McAllister of Highgate	Oxholm of Vergennes
Komline of Dorset	McDonald of Berlin	Peaslee of Guildhall
Krawczyk of Bennington	McFaun of Barre Town	Pugh of S. Burlington
Larocque of Barnet	McNeil of Rutland Town	Scheuermann of Stowe
Larrabee of Danville	Monti of Barre City	Turner of Milton
LaVoie of Swanton	Morley of Barton	Westman of Cambridge
Lawrence of Lyndon	Morrissey of Bennington	Wheeler of Derby
Lewis of Derby	Myers of Essex	Winters of Williamstown
Livingston of Manchester	O'Donnell of Vernon	Wright of Burlington

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

Brennan of Colchester	Perry of Richford	Weston of Burlington
Kilmartin of Newport City	Pillsbury of Brattleboro	
Lippert of Hinesburg	Valliere of Barre City	

Rep. Adams of Hartland explained his vote as follows:

"Madam Speaker:

I vote no because I believe this body does not fully understand the fiscal impacts and consequences of this bill to Vermont rate payers and other potential risks to our state."

Rep. Klein of East Montpelier explained his vote as follows:

"Madam Speaker:

I vote yes to make clear that business should be responsible for all their costs. Decommissioning a nuclear plant after it is no longer operating is a legitimate business cost. S. 373 makes clear that Vermonters are guaranteed, guaranteed not to be responsible for any decommissioning costs, should that plant be decommissioned in 2012, 2032 or 2090 or whenever."

Rep. Kupersmith of South Burlington explained her vote as follows:

"Madam Speaker:

I fully appreciate the many concerns expressed in the debate on this bill yesterday. I am comfortable voting for this bill, not because these concerns have been put to rest, but rather because these concerns will be fully addressed by the entity that is equipped to do that work — that is, the Public Service Board.

Despite much of what we have heard in this debate, the Public Service Board's ability to determine whether this proposed sale is in the public good — and whether the resources for decommissioning will be adequate, remains intact.

The bill's specific language allows the Board to look to the "decommissioning fund, other funds and financial guarantees" to ensure that decommissioning will be paid for. The debate effectively ignored this language providing for other financial guarantees. I trust our Public Service Board to broadly interpret this language to accommodate the party's particular financial situation.

Rep. LaVoie of Swanton explained her vote as follows:

"Madam Speaker:

Unfortunately for the people of Vermont and the businesses that employ them, this bill calls into question the ability and credibility of the National Regulatory Commission and our own Public Service Board, as well as endangers the reliability and cost of our energy future. Our real motives ought to be questioned."

Rep. Pearson of Burlington explained his vote as follows:

"Madam Speaker:

Our action today is responsible and appropriate. This bill protects Vermont from a potential, Enron-like financial crisis."

Message from the Senate No. 62

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. 894 An act relating to approval of amendments to the charter of the town of Windsor.

And has passed the same in concurrence.

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

H. 558. An act relating to waste facility franchise tax exemption for mining waste.

H. 619. An act relating to the regulation of sexual assault nurse examiners.

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

The Governor has informed the Senate that on the twenty-third day of April, 2008, he approved and signed a bill originating in the Senate of the following title:

S. 280. An act relating to prosthetic parity.

Rules Suspended; Consideration Interrupted by Recess

H. 896

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

An act relating to balancing the transportation budget and repairing deteriorating roads;

Was taken up for immediate consideration.

Recess

At twelve o'clock and five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

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

Consideration Resumed; Action Postponed

H. 896

Consideration resumed on House bill, entitled

An act relating to balancing the transportation budget and repairing deteriorating roads;

Rep. Westman of Cambridge moved to postpone action until after consideration of S. 304, which was agreed to.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 304

Rep. Anderson of Montpelier, for the committee on Fish, Wildlife and Water Resources, to which had been referred Senate bill, entitled

An act relating to a groundwater withdrawal permit program;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 10 V.S.A. § 1390 is amended to read:

§ 1390. POLICY

It is the policy of the state of Vermont that it shall protect its groundwater resources to maintain high quality drinking water and shall manage its groundwater resources to minimize the risks of groundwater quality deterioration by limiting human activities that present unreasonable risks to the use classifications of groundwater in the vicinities of such activities while balancing the state's groundwater policy with the need to maintain and promote a healthy and prosperous agricultural community. The general assembly hereby finds and declares that:

(1) the state should adhere to the policy for management of groundwater of the state as set forth in section 1410 of this title;

(2) in recognition that the groundwater of Vermont is a precious, finite, and invaluable resource upon which there is an ever-increasing demand for present, new, and competing uses; and in further recognition that an adequate supply of groundwater for domestic, farming, dairy processing, and industrial uses is essential to the health, safety, and welfare of the people of Vermont, the withdrawal of groundwater of the state should be regulated in a manner that benefits the people of the state; is compatible with long-range water resource planning, proper management, and use of the water resources of Vermont; and is consistent with Vermont's policy of managing groundwater as a public resource for the benefit of all Vermonters;

(3) it is the policy of the state that the state shall protect its groundwater resources to maintain high-quality drinking water;

(4) it is the policy of the state that the groundwater resources of the state shall be managed to minimize the risks of groundwater quality deterioration by regulating human activities that present risks to the use of groundwater in the vicinities of such activities while balancing the state's groundwater policy with the need to maintain and promote a healthy and prosperous agricultural community; and

(5) it is the policy of the state that the groundwater resources of the state are held in trust for the public. The state shall manage its groundwater resources in accordance with the policy of this section, the requirements of this subchapter, and section 1392 of this title for the benefit of citizens who hold and share rights in such waters. The designation of the groundwater resources of the state as a public trust resource shall not be construed to allow a new right of legal action by an individual other than the state of Vermont, except to remedy injury to a particularized interest related to water quantity protected under this subchapter.

Sec. 2. 10 V.S.A. chapter 48, subchapter 6 is added to read:

Subchapter 6. Groundwater Withdrawal Program

§ 1416. DEFINITIONS

As used in this subchapter:

(1) "Farming" means farming as the term is defined in subdivision 6001(22) of this title.

(2) "Groundwater" means water below the land surface, including springs.

(3) "Person" means any individual, partnership, company, corporation, cooperative, association, unincorporated association, joint venture, trust, the state of Vermont or any department, agency, subdivision, or municipality, the United States government or any department, agency, or subdivision, or any other legal or commercial entity.

(4) "Spring" means a groundwater source where groundwater flows naturally to the surface of the earth and is collected with a developed structure that is designed to locate or extract groundwater.

(5) "Surface water" means waters within the meaning of subdivision 1251(13) of this title.

(6) "Water resources" means groundwater or surface water.

(7) "Well" means any hole drilled, driven, bored, excavated, or created by similar method into the earth to locate, monitor, extract, or recharge groundwater where the water table or potentiometric surface is artificially lowered through pumping.

(8) "Withdraw" or "withdrawal" means the intentional removal by any method or instrument of groundwater from a well, spring, or combination of wells or springs.

§ 1417. EXISTING GROUNDWATER WITHDRAWAL; REPORTING

(a) Beginning September 1, 2009, any person that withdraws more than 20,000 gallons per day, averaged over a calendar month at a single tract of land or place of business shall file a groundwater report with the secretary of natural resources on or before September 1 for the preceding calendar year. The report shall be made on a form prescribed by the secretary and shall include:

(1) the location, capacity, frequency, and rate of the withdrawal;

(2) a description of the use of the water withdrawn; and

(3) where feasible, the distance of each withdrawal from the nearest surface water source and wetland.

(b) The following are exempt from the reporting requirements of this section:

(1) a groundwater withdrawal for fire suppression or other public emergency purposes;

(2) a withdrawal reported to the agency of natural resources under any program that requires the reporting of substantially similar data. The agency of natural resources shall record such withdrawals with the information from withdrawals reported under this section;

(3) domestic, residential use;

(4) groundwater withdrawal for farming

(5) dairy processors and milk handlers licensed in accordance with 6 V.S.A. § 2721;

(6) public water systems, as that term is defined in section 1671 of this title; and

(7) closed loop, standing column, or similar non-extractive geothermal heat pumps.

(c) The secretary of natural resources may adopt rules to implement this section, including methods for calculating or estimating the amount of groundwater withdrawn from a well or spring.

§ 1418. GROUNDWATER WITHDRAWAL PERMIT

(a) On and after July 1, 2010, no person, for commercial or industrial uses, shall make a new or increased groundwater withdrawal of more than 57,600 gallons a day from any well or spring on a single tract of land or at a place of business without first receiving from the secretary of natural resources a groundwater withdrawal permit. The following shall constitute a "new or increased withdrawal":

(1) The expansion of any existing withdrawal through:

(A) additional withdrawal from one or more new wells or springs; or

(B) an increase in the rate of withdrawal from a well or spring above the maximum rate set forth in any existing permit issued by the secretary of natural resources under this section; or

(2) For previously unpermitted withdrawals, an increase in the rate of withdrawal after July 1, 2010 from a well or spring on a single tract of land or

at a place of business of 25 percent of the baseline withdrawal or an increase of 57,600 gallons of groundwater withdrawn, whichever is smaller.

(3) For the purposes of this subsection, the baseline withdrawal shall be the highest amount withdrawn by a person between 2005 and 2010.

(b) The following are exempt from the permitting requirements of this section:

(1) a groundwater withdrawal for fire suppression or other public emergency purpose;

(2) domestic, residential use;

(3) groundwater withdrawal for farming;

(4) dairy processors and milk handlers licensed in accordance with 6 V.S.A. § 2721;

(5) public water systems, as that term is defined in section 1671 of this title; and

(6) closed loop, standing column, or similar non-extractive geothermal heat pumps.

(c)(1) At least 30 days before filing an application for a permit under this section, the applicant shall hold an informational hearing in the municipality in which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

(2) On or before the date of filing with the secretary of natural resources an application for a permit under this section, an applicant for a withdrawal under this section shall notify:

(A) the clerk, legislative body, and any conservation commission in the municipality in which the proposed withdrawal is located;

(B) adjoining municipalities;

(C) the regional planning commission in the region where the proposed withdrawal is located;

(D) all landowners and mobile home park residents within the zone of influence of a groundwater withdrawal or within one quarter mile downstream from a withdrawal from a spring. Notice to the officers of a condominium association shall be deemed sufficient under this subdivision for

notice to residents of a condominium; and

(E) any public water systems permitted by the agency of natural resources in the municipality where the proposed withdrawal is located.

(3) The applicant shall publish notice of the application in a newspaper of general circulation in the area in which the withdrawal is proposed and shall post a copy of the notice in the municipal clerk's office in the municipality in which the withdrawal is located.

(4) On its own motion or on receipt of a written request, the agency shall hold a public meeting in the municipality in which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Opportunity shall be given all participants at a public meeting to ask questions and comment on all issues involved. The agency shall prepare a responsiveness summary for each public meeting conducted. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

(5) No defect in the form or substance of any notice requirements in subdivisions (1), (2), or (3) of this subsection shall invalidate an application for a permit under this section provided that reasonable efforts are made to provide adequate posting and notice. An application for a permit under this section shall be invalid when a defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental court, the applicant may reapply and provide new posting and notice.

(d) Application for a permit shall be on a form prepared by the secretary. An application shall, at a minimum, contain the information necessary to make the determinations contained in subsection (e) of this section, and the following:

- (1) the purpose for the withdrawal;
- (2) the location and source of the withdrawal;
- (3) the amount of the proposed withdrawal, including estimates of the projected mean and peak daily, monthly, and annual withdrawals;
- (4) the place of the proposed return flow of withdrawn water;
- (5) the estimated amount of water that will not be returned to the watershed where the proposed withdrawal is located;
- (6) the location, demand on, and yield of existing sources of groundwater and surface water utilized by the applicant; and

(7) a brief description of the alternative means considered for satisfying the applicant's stated use for water.

(e) The secretary shall not issue a permit for a new or increased groundwater withdrawal unless the secretary determines:

(1) that the proposed withdrawal is planned in a fashion that provides for efficient use of the water;

(2) that the proposed withdrawal, in combination with other existing withdrawals, will meet the standards set by the secretary of natural resources in rule for establishing a safe yield in the area of the withdrawal;

(3) that the proposed withdrawal is consistent with the town or regional plan in which the proposed withdrawal is located, and with any duly adopted state policy to manage groundwater as a shared resource for the benefit of all citizens of the state, including any policies and programs of the state of Vermont regarding long-range planning, management, allocation, and use of groundwater and surface water in effect at the time the application for the withdrawal is filed;

(4) that the proposed withdrawal will not have an undue adverse effect on existing uses of water dependent on the same water source;

(5) that the proposed withdrawal will not have an undue adverse effect on a public water system permitted by the agency of natural resources;

(6) that the proposed withdrawal will not have an undue adverse effect on significant wetlands under the Vermont wetland rules or on other water resources hydrologically interconnected with the well or spring from which the proposed withdrawal would be made;

(7) that the proposed withdrawal will not violate the Vermont water quality standards; and

(8) any other consideration that the secretary determines necessary for the conservation of water or protection of groundwater quality.

(f) A permit issued under this section shall be valid for the period of time specified in the permit but not for more than 10 years. A permit issued under this section shall include the following:

(1) that groundwater withdrawals from a well or spring for drinking water supplies, farming, or dairy processing shall be given priority over other uses during times of shortage; and

(2) any other condition that the secretary determines necessary for the conservation of water or protection of groundwater quality.

(g) The secretary may require any person withdrawing groundwater in the state to obtain a permit under this section if the withdrawal is not exempt under subsection (b) of this section and secretary determines that the withdrawal violates the Vermont water quality standards or has an undue adverse effect on an existing use of groundwater, a public water system permitted by the agency of natural resources, wetlands, or water resources hydrologically interconnected with the well or spring from which the withdrawal occurs. The secretary shall make a determination under this section based on review of the information set forth under subsection (d) of this section that is readily available to the secretary.

(h) A withdrawal permit issued under this section may be transferred upon a change of ownership of the facility or project for which the permit was issued, provided that the new owner applies for an administrative amendment to the permit certifying its agreement to comply with all terms and conditions of the transferred permit and assume all other associated obligations.

(i) The following groundwater withdrawals shall be deemed to comply with the public trust requirements of the state for groundwater management and shall be entitled to a presumption that the withdrawal complies with the public trust requirements of the state:

(1) A groundwater withdrawal permitted under this section;

(2) A groundwater withdrawal for domestic, residential use;

(3) A groundwater withdrawal for public water systems, except for a bottled water facility operating under a source permit issued prior to the effective date of this act, permitted under chapter 56 of this title;

(4) A groundwater withdrawal for a potable water supply permitted under chapter 64 of this title;

(5) A groundwater withdrawal for farming conducted in compliance with the requirements of chapter 215 of Title 6; and

(6) A groundwater withdrawal by a dairy processor or milk handler licensed in accordance with 6 V.S.A. § 2721.

(j) On or before July 1, 2010, the secretary shall adopt rules to implement this section. When rules are adopted by the secretary under this section, section 1415 of this title shall be repealed. The rules adopted under this section shall include: