

**No. 58. An act relating to expanding the sex offender registry.**

(S.125)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION  
AND SAFETY ACT OF 2006

(a) The Act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the Act, the National Conference of State Legislatures called the guidelines a “burdensome,” “preemptive,” “unfunded mandate” for the states, requiring every legislature to undertake an extensive review of its laws as compared to the Act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the Act, as of February 1, 2009, no state has been certified to be in substantial compliance with the Act. States are required to comply with the Act by July 27, 2009 or lose 10 percent of the state’s federal Byrne/JAG funds, although Vermont has recently received a one-year extension from the Office

of Justice Programs' SMART office, which is responsible for regulations and compliance under the Act.

(c) Constitutional challenges. The Act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Risk assessments. Vermont has adopted a practice of assigning offender risk levels through the use of actuarial risk assessment instruments. These instruments use a predetermined range of variables that have high correlation to sexual recidivism such as criminal history, victim profile, and age at time of offense to determine an offender's potential risk of recidivism. The Adam Walsh Act mandates an entirely different offense tier structure and demands that risk determination be based solely on an offender's crime of conviction, not on an actuarial risk assessment score. According to the most recent research, using crime of conviction as the primary method of determining offender risk is a far less reliable predictor of reoffense than is the use of actuarial tools.

(e) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the Act retroactively, requiring Vermont to retier all sexual

offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635A. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) “Coercion” means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) “Commercial sex act” means any sex act on account of which anything of value is promised to, given to, or received by any person.

(3) “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) compel a person through force, fraud, or coercion to engage in a commercial sex act; or

(3) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than \$25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a direct result of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense, other than a violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title, which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

Sec. 3. 13 V.S.A. § 5301(7) is amended to read:

(7) For the purpose of this chapter, “listed crime” means any of the following offenses:

\* \* \*

(AA) the attempt to commit any of the offenses listed in this section;

~~and~~

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title); and

(CC) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2635a of this title.

\* \* \* Minor Disseminating Indecent Material (“Sexting”) \* \* \*

Sec. 4. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of

this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (b)(1) of this section or prosecuted in district court under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than \$300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under section 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or any other applicable provision of law.

Sec. 5. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding

allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

\* \* \*

\* \* \* Sex Offender Registry \* \* \*

Sec. 6. 13 V.S.A. § 5401(10) is amended to read;

(10) “Sex offender” means:

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

- (i) sexual assault as defined in 13 V.S.A. § 3252<sub>2</sub>;
- (ii) aggravated sexual assault as defined in 13 V.S.A. § 3253<sub>2</sub>;
- (iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601<sub>2</sub>;
- (iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A.

§ 1379<sub>2</sub>;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c)<sub>2</sub>;

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) a federal conviction in federal court for any of the following offenses:

(I) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(III) Sexual abuse as defined in 18 U.S.C. § 2242.

(IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(V) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(VI) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(VIII) Selling or buying of children as defined in 18 U.S.C.

§ 2251A.

(IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(X) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(XI) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(XII) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(XIV) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(XV) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

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

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

- (i) any offense listed in subdivision (A) of this subdivision ~~(10)~~;
- (ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D) ~~;~~;
- (iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602 ~~;~~;
- (iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635 ~~;~~;

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

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

(vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a.

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a.

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b).

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

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

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state, was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for

purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

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

Sec. 7. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

\* \* \*

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

\* \* \*

Sec. 8. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than \$1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than \$5,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than \$5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

\* \* \* Internet Sex Offender Registry \* \* \*

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

(1) ~~Sex offenders who have been convicted of a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child);~~

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A.

§ 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602).

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)).

(G) Slave traffic if a registrable offense under subdivision 5401 (10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C.

§ 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

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

for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

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

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

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three

months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

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

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old; and

(B) information shall only be posted electronically if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by six months or more of imprisonment.

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

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;
- (6) the date and nature of the offender's conviction;
- (7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;
- (8) whether the offender complied with treatment recommended by the department of corrections;
- (9) a statement that there is an outstanding warrant for the offender's arrest, if applicable; ~~and~~
- (10) the reason for which the offender information is accessible under this section;
- (11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title; and
- (12) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department shall permit a person

subject to this subdivision to obtain a risk assessment at the person's own expense.

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

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

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

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

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

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and

maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution.”

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

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

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

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411b. DESIGNATION OF HIGH-RISK SEX OFFENDER

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

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

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

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than ~~September 1, 2005~~ September 1, 2009.

#### Sec. 11. APPLICABILITY

Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections except as provided in subdivision (3)(A) of this section.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act of a crime committed in this state who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13, or a person convicted prior to the effective date of this act of lewd or lascivious conduct with a child in

violation of 13 V.S.A. § 2602 or a second or subsequent conviction for voyeurism in violation of 13 V.S.A. § 2605(b) or (c) who is under the supervision of the department of corrections, unless the sex offender review committee determines pursuant to the requirements of this subdivision (3), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(ii) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision (3)(B) to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

(C) All decisions made by the sex offender review committee under subdivision (3)(A) of this section shall be reviewed and approved by the

commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

\* \* \* Sex Offender Name Changes \* \* \*

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

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

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

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

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

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

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

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

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

\* \* \* Sex Offender Addresses on Internet \* \* \*

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

\* \* \*

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

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;
- (6) the offender's address or, if the offender does not have a fixed

address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest;

(D) the offender is subject to the registry for a conviction of a sex offense against a child under 13 years of age; or

(E) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

\* \* \*

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

\* \* \*

\* \* \* Statutes of Limitations in Child Sex Abuse Cases \* \* \*

Sec. 15. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection 141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, sexual exploitation of a minor as defined in subsection 3258(b) of this title, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ under 18 years of age or under, shall be commenced within the earlier of the date the victim attains the age of 24 or ~~six~~ ten years from the date the offense is reported, and not after. For purposes of this subsection, an offense is reported when a report of the conduct constituting the offense is made to a law enforcement officer by the victim.

\* \* \*

\* \* \* Sentence Calculation \* \* \*

Sec. 16. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

#### Sec. 17. STUDY; CALCULATION OF SENTENCES

(a) The chief justice of the Vermont supreme court or designee, the commissioner of the department of corrections or designee, the defender general or designee, and the executive director of the department of the state's attorneys and sheriffs or designee shall collaborate to examine sentence computation issues, including alternative methods to address computation that would:

(1) reduce calculation and computation errors; and

(2) provide clarity to the offender at the time of sentencing regarding the offender's earliest and latest possible release dates.

(b) The study group shall report its findings and a proposal for addressing the issues identified in subsection (a) of this section to the house committees on judiciary and on corrections and institutions and the senate committee on judiciary no later than December 15, 2009. The proposal shall include a plan for implementation and any statutory changes necessary to implement the plan.

## \* \* \* Miscellaneous Provisions \* \* \*

Sec. 18. 20 V.S.A. § 2061 is amended to read:

## § 2061. FINGERPRINTING

\* \* \*

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation for the sole purpose of identifying an individual. ~~However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment.~~ If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

\* \* \*

Sec. 19. 28 V.S.A. § 204 is amended to read:

§ 204. –SUBMISSION OF WRITTEN REPORT; PROTECTION OF  
RECORDS

\* \* \*

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

\* \* \*

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected, pursuant to a court order issued ex parte, by a state or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 20. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING  
OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the commissioner. Each supervising officer is charged with the following powers and responsibilities:

\* \* \*

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility. Except as otherwise provided by law, the contents of an inmate's file may be inspected, pursuant to a court order issued ex parte, by a state or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 21. 28 V.S.A. § 856 is added to read:

§ 856. SPECIAL MANAGEMENT MEALS

(a) When an inmate misuses bodily waste or fluids, food, or eating utensils, the supervising officer of the facility or his or her designee may order that the inmate be served special management meals in lieu of regular inmate meals pursuant to this section.

(b)(1) When it appears to the supervising officer that an inmate may be subject to an order to receive special management meals, the officer shall notify the inmate in writing of the reason for the determination and the facility's evidence for it.

(2)(A) Before being served special management meals, the inmate shall be provided an opportunity to meet with a member of the facility's staff not involved in the incident. The purpose of the meeting shall be to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils.

(B) At a meeting between an inmate and a staff member held pursuant to this subdivision (2), the inmate may identify any disagreement he or she has with the facility's version of the facts, identify witnesses who support his or her defense, identify any mitigating circumstances which should be considered, and offer any other arguments that may be appropriate. The

inmate shall not have the right to cross-examine witnesses or to call witnesses to testify on his or her behalf.

(c) If the officer determines that there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils, the officer may order that the inmate be served special management meals in lieu of regular inmate meals for a maximum of seven consecutive days.

(d) When the supervising officer orders that an inmate be served special management meals, a hearing officer designated by the officer shall conduct a fact-finding hearing within 48 hours pursuant to the following procedure:

(1) Notice of the charge and of the hearing shall be given to the inmate.

(2) The inmate shall have an opportunity, subject to reasonable rules, to confront the person bringing the charge.

(3) The inmate shall have the right to be present and heard at the hearing subject to reasonable rules of conduct.

(4) The hearing officer shall summon to testify any available witness or other persons with relevant knowledge of the incident, subject to reasonable rules. The inmate charged may be permitted to question any person who testifies pursuant to this subdivision.

(5) If the inmate so requests, he or she may be assisted in the preparation and presentation of his or her case by an assigned employee of the facility if the supervising officer determines in his or her discretion that the requested employee is reasonably available.

(e) If the hearing officer determines that a preponderance of the evidence does not establish that the inmate misused bodily waste or fluids, food, or eating utensils, the supervising officer shall discontinue service of special management meals to the inmate.

(f) The service of special management meals shall not be construed as punishment and shall not be subject to the requirements of sections 851–853 of this title.

Sec. 22. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE ~~TEN~~ 12  
OR UNDER; ~~MENTALLY RETARDED OR MENTALLY ILL PERSON~~  
WITH A MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY

(a) Statements by a person who is a child ~~ten~~ 12 years of age or under or who is a person in need of guardianship as defined in 14 V.S.A. § 3061 with a mental illness as defined in 18 V.S.A. § 7101(14) or developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or

lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person ~~in need of guardianship~~ with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is available to testify in court or under Rule 807; and

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

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

#### Sec. 23. REPORT

The department of public safety shall report to the senate and house committees on judiciary no later than December 15, 2009 regarding the management, staffing, funding, and operation of the sex offender registry. The report shall address actions taken by the department to communicate with other agencies and departments regarding information placed on the sex offender Internet registry and the department's readiness and plan for implementing Sec. 14 of this act in 2010.

Sec. 24. 24 V.S.A. § 363 is amended to read:

#### § 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his or her office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys

except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 25. JOINT COMMITTEE ON CORRECTIONS OVERSIGHT

(a) The joint committee on corrections oversight shall consider:

(1) how to employ strategies that facilitate community reintegration that do not unduly burden the services and budgets of communities with a large number of supervisees; and

(2) issues related to the operation of the sex offender Internet registry, including the accuracy of the information it contains.

(b) The committee shall include recommendations on the issues described in subsection (a) of this section in its annual report to the general assembly.

Sec. 26. 13 V.S.A. § 7041(g) is amended to read:

(g) Upon discharge of the respondent from probation for a violation of ~~section 2602 (lewd and lascivious conduct with a child), 3252(e), (d), or (e)~~

~~(sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title~~ any felony sex offense which requires registration pursuant to subchapter 3 of chapter 167 of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

Sec. 27. AMENDMENT TO NO. 1 OF THE ACTS OF 2009

Subsection (g) of 13 V.S.A. § 7041 in Sec. 33b of No. 1 of the Acts of 2009 shall be stricken in its entirety and the following shall be inserted in lieu thereof:

(g) Upon discharge of the respondent from probation for a violation of any felony sex offense which requires registration pursuant to subchapter 3 of chapter 167 of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the

deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Secs. 22 and 26 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010, provided that Sec. 14 shall not take effect until the state auditor, in consultation with the department of public safety and the department of information and innovation technology, has provided a favorable performance audit regarding the Internet sex offender registry to the senate and house committees on judiciary, the house committee on corrections and institutions, and the joint committee on corrections oversight.

Approved: June 1, 2009