

**OFFICE OF THE DEFENDER GENERAL  
2009 GREEN MOUNTAIN JUVENILE AND  
CRIMINAL DEFENSE INSTITUTE**

**JUNE 4, 2009**

The Inn at Essex  
70 Essex Way  
Essex Jct., VT 05452

**NEW SEX LAWS: YIPES!!**

**S.125**

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S.125 - SUMMARY  
AN ACT RELATING TO  
EXPANDING THE SEX OFFENDER REGISTRY

EFFECTIVE 7/109 UNLESS OTHERWISE NOTED.

I. SEX CRIMES

A. SEX TRAFFICKING, 13 V.S.A. § 2635a

The Act creates the crimes of sex trafficking of children, and sex trafficking of any person by force, fraud or coercion.

- a. Both crimes are punishable by imprisonment up to and including life or a fine up to \$25,000 or both.
- b. Both are "listed crimes" under 13 V.S.A. §5301(7)(CC).
- c. A victim of sex trafficking shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) for conduct committed as direct result of the trafficking.
- d. If a victim is prosecuted for any other offense arising out of the trafficking, other than those listed in (c) above, the victim may raise an affirmative defense that the offense was a result of force, fraud or coercion by a sex trafficker.

B. SEXTING, 13 V.S.A. § 2802b

The Act creates the crime of a minor electronically disseminating indecent material to another person.

- a. 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.
- b. No person shall possess a visual depiction transmitted to the person in violation of (a) above. There is no violation if the person took reasonable steps, whether successful or not, to destroy or eliminate the depiction.
- c. First offense minors shall be adjudicated delinquent, and any action shall be filed in family court. Such minors also shall not be prosecuted under chapter 64 (sexual exploitation of children), and shall not be subject to sex offender registration requirements of subchapter 3 of chapter 167.
- d. Minors previously adjudicated in violation of this offense may be adjudicated in family court or prosecuted in district court under

- chapter 64 (sexual exploitation of children), but shall not be subject to sex offender registration requirements of subchapter 3 of chapter 167.
- e. Any minor adjudicated delinquent shall have his or her records expunged when s/he reaches 18 years of age.
  - f. An adult convicted for possession of a depiction transmitted by a minor shall be fined not more than \$300 or imprisoned not more than six months or both.

**C. EXPUNGEMENT OF RECORDS IN DEFERREDS, 13 V.S.A. § 7041(g) – EFFECTIVE 7/2/09**

This bill amends Act 1 (S.13) of 2009 to include “any felony offense which requires registration pursuant to subchapter 3 of chapter 167 of this title.” This section goes into effect 7/2/09 and states that upon discharge from probation for a violation of any such felony the entities are permitted to retain their own records and files related to the arrest, citation, investigation, and charge that led to the deferred, and may share them with other investigating agencies. [Note: Retention of these records and files expires on 7/1/14.]

**D. STATUTE OF LIMITATIONS (13 V.S.A. § 4501)**

- a. There is no statute of limitations for aggravated sexual assault of a child. (13 V.S.A. § 4501(a))
- a. Section (c) has been amended in three ways:
  - i. It now includes sexual exploitation of a minor (3258(b)).
  - ii. The age of the victim has increased to “under 18 years of age” rather than “16 years of age or under.”
  - iii. Prosecutions now must be “within the earlier of the date the victim attains the age of 24 or ten years from the date the offense is reported, and not after” (*emphasis added*). The number of years was six.

**II. SEX OFFENDER REGISTRY**

**A. SEX OFFENDER – Definition Expansion\*\***

- a. The Act expands “sex offender” to include conviction for a long list of federal offenses, aggravated sexual assault of a children (13 V.S.A. § 3253a), sex trafficking (13 V.S.A. § 2635a), and sexual exploitation of a minor (13 V.S.A. § 3258(b)).
- b. A person 18 years of age or older required to register as a sex offender in another jurisdiction of the United States who moves to Vermont (except for purposes of incarceration) must register as a sex offender in Vermont unless the offense was criminal only because of the age of

the victim and the perpetrator was under the age of 18 and the victim was at least 12 years old.

## B. REPORTING RESPONSIBILITY

“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.” (13 V.S.A. § 5407)

## C. PENALTIES

- a. Sex offenders are presumed to know and understand all obligations under 13 V.S.A. § 5409.
- b. An affidavit by the registry administrator “which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.”
- c. “Certified records of the sex offender registry shall be admissible into evidence as business records.

## D. INTERNET REGISTRY (13 V.S.A. § 5411a)\*\*

- a. Anyone required to register as a sex offender in Vermont, with the exception of those found guilty of lewd and lascivious conduct (not with a child), will now be posted on the internet.
- b. Included on the internet will be anyone convicted of a long list of federal offenses.
- c. A person 18 years of age or older who is required to register as a sex offender in another jurisdiction of the United States who moves to Vermont (except for purposes of incarceration) must register as a sex offender in Vermont unless the offense was criminal only because of the age of the victim and the perpetrator was under the age of 18 and the victim was at least 12 years old. The offense for which the person was required to register must be a felony or a misdemeanor punishable by six months or more of imprisonment.
- d. The registry will indicate whether the offender has been designated high-risk for DOC pursuant to section 5411b, and “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.”
- e. All offenders posted on the internet are now required to annually report to the department or local law enforcement agency so they can be photographed.
- f. The internet registry will now be searchable by city and town in addition to offender name and county.

- g. DOC is now required to evaluate sex offenders for the purpose of determining whether the offender is "high-risk" as defined in section 5401. DOC "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, 2009."
- h. POSTING OF HOME ADDRESSES: ***EFFECTIVE 7/1/10*** and subject to a favorable performance audit by the state auditor of the internet sex offender registry, the internet registry will include 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;
  - 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.

#### **\*\*E. APPLICABILITY**

The changes to the 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.

#### F. NAME CHANGES

Probate Court shall check the registry upon receipt of a change-of-name form. If the person is on the registry, s/he will not be able to change his or her name unless the court finds, "after permitting the department of public safety to appear, that there is a compelling purpose for doing so."

#### III. SENTENCE CALCULATIONS (13 V.S.A. § 7044)

- A. §7044(a) – DOC will now provide sentence calculations to both the court and the ODG – currently only the court receives the calculations.
- B. §7044(b) – If the court imposes any incarcerative sentence, DOC must provide the defendant with a copy and explanation of the sentence calculation.
- C. The Chief Justice, DOC commissioner, DG, and director of the state's attorneys & sheriff association will participate in a study committee on this topic and issue a report by 12/15/09.

#### IV. FINGERPRINTING

VCIC can send fingerprints and photographs to the FBI at any time after arrest, summons or citation (they do not have to wait until after arraignment), and no longer have to do it just for the sole purpose of identifying an individual.

#### V. DOC

A. REPORTS (28 V.S.A. §204(f) and §601(10))

“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.”

- B. 28 V.S.A. § 856 deals with “special management meals” (i.e. Nutraloaf after the Vermont Supreme Court decision in Borden, et al v. Hofmann, 2009 VT 30).

VI. RULES OF EVIDENCE – HEARSAY EXCEPTION (Rule 804a) –  
EFFECTIVE 7/2/09

Person “in need of guardianship” has been changed to person “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).”

VII. JURISDICTION OF DEPUTY STATE’S ATTORNEYS

“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.”

VIII. CORRECTIONS OVERSIGHT

The Corrections Oversight Committee will look at:

- A. 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
- B. issues related to the operation of the sex offender internet registry, including the accuracy of the information it contains (*emphasis added*).