

1 S.163

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Criminal procedure; sex offenses; Internet sex offender registry

5 Statement of purpose: This bill proposes to make two technical corrections to
6 Act No. 1 and Act No. 58 of the Acts of 2009. The bill proposes to: (1) clarify
7 legislative intent in Act. No. 1 by providing that prior law goes back into effect
8 when the provisions regarding depositions of sensitive witnesses are repealed
9 in 2011; and (2) address an omission made in Act No. 58 by including on the
10 Internet sex offender registry offenders who commit a registrable offense
11 outside Vermont.

12 An act relating to technical corrections to 2009 sex offender legislation

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

14 ~~Sec. 1. Rule 15 of the Vermont Rules of Criminal Procedure is amended to~~

15 read:

16 RULE 15. DEPOSITIONS

17 * * *

18 (f) Protection of Deponents.

19 (1) Deponent's Counsel and Victim Advocate. A deponent may have
20 counsel present at the deposition and may make legal objections to questions

1 ~~The deponent shall be treated as a party at hearings on motions pertaining to~~
2 the deposition. A victim of an alleged crime may have a victim advocate
3 present during the deposition. The deponent may apply to the court for a
4 protective order if the deponent believes that he or she is being subjected to
5 harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or
6 other notice of the deposition given to the deponent, shall include notice that
7 the deponent may have the assistance of counsel and the victim advocate as
8 provided herein and seek a protective order as provided in subdivision (f)(3).

9 (2) Depositions of Sensitive Witnesses. A person under the age of 16 or
10 any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and
11 lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252
12 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a
13 sensitive witness. Prior to taking the deposition of a sensitive witness, the
14 party seeking to take the deposition shall consult with the other parties and the
15 deponent in an effort to reach an agreement on the time, place, manner, and
16 scope of the taking of the deposition. If an agreement cannot be reached, the
17 party seeking to take the deposition shall so advise the court and specify the
18 matters which are in dispute. The court shall then issue an order regulating the
19 taking of the deposition, including, in its discretion, a requirement that the
20 deposition be taken in the presence of a judge or special master. The
21 restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking

1 ~~a deposition proposes to ask about information that falls within 13 V.S.A.~~
2 § 3255(a)(3)(A)–(C), the party shall notify the other parties and the deponent
3 of this intent prior to seeking agreement on the scope of the deposition.

4 (3) Protective Orders. At the request of a party or deponent, and for
5 good cause shown, the court may make any protective order which justice
6 requires to protect a party or deponent from emotional harm, unnecessary
7 annoyance, embarrassment, oppression, invasion of privacy, or undue burden
8 of expense or waste of time. Such orders may include, among other remedies,
9 the following: (1) that the deposition may be taken only on specified terms
10 and conditions, including a designation of the time, place, and manner of
11 taking the deposition; (2) that the deposition may be taken only by written
12 questions; (3) that certain matters not be inquired into, or that the scope of the
13 deposition be limited to certain matters; (4) that the deposition be conducted
14 with only such persons present as the court may designate; (5) that after the
15 deposition has been taken, the tape or transcription be sealed until further order
16 of the court; (6) that the deposition not be taken. In ruling on such request, the
17 court may consider, among other things, the age, health, level of intellectual
18 functioning, and emotional condition of the witness, whether the witness has
19 knowledge material to the proof of or defense to any essential element of the
20 crime, whether the witness has provided a full written, taped, or transcribed
21 account of his or her proposed testimony at trial, whether the witness's

1 ~~testimony will relate only to a peripheral issue in the case, or whether an~~
2 ~~informal interview or telephone conference with the witness will suffice for the~~
3 ~~purposes of discovery in the case.~~

4 Sec. 2. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

5 Sec. 11. APPLICABILITY

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

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

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

12 (3)(A) A person convicted prior to the effective date of this act of a
13 crime committed in this state who is not under the supervision of the
14 department of corrections and is subject to sex offender registry requirements
15 under subchapter 3 of chapter 167 of Title 13, or a person convicted prior to
16 the effective date of this act of lewd or lascivious conduct with a child in
17 violation of 13 V.S.A. § 2602 or a second or subsequent conviction for
18 voyeurism in violation of 13 V.S.A. § 2605(b) or (c) who is under the
19 supervision of the department of corrections, unless the sex offender review
20 committee determines pursuant to the requirements of this subdivision (3),
21 taking into account whether the person has been charged or convicted of a

1 ~~criminal offense or a probation or parole violation since being placed on the~~
2 registry, that the person has successfully reintegrated into the community.

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

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

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

16 (C) All decisions made by the sex offender review committee under
17 subdivision (3)(A) of this section shall be reviewed and approved by the
18 commissioner of the department of corrections. The agency of human services
19 shall adopt emergency rules which establish criteria for the commissioner's
20 decision.

1 ~~(4) A person convicted prior to July 1, 2009 of a crime committed in any~~
2 ~~jurisdiction of the United States other than Vermont, including a state,~~
3 ~~territory, commonwealth, the District of Columbia, or military, federal, or~~
4 ~~tribal court, who is not under the supervision of the department of corrections~~
5 ~~and is subject to sex offender registry requirements under subchapter 3 of~~
6 ~~chapter 167 of Title 13.~~

7 *Sec. 2. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:*

8 *Sec. 11. APPLICABILITY*

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

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

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

15 *(3)(A) A person convicted prior to the effective date of this act of a*
16 *crime committed in this state, who is not under the supervision of the*
17 *department of corrections and is subject to sex offender registry requirements*
18 *under subchapter 3 of chapter 167 of Title 13; or a person convicted prior to*
19 *the effective date of this act of lewd or lascivious conduct with a child in*
20 *violation of 13 V.S.A. § 2602 or a second or subsequent conviction for*
21 *voyeurism in violation of 13 V.S.A. § 2605(b) or (c), who is under the*
22 *supervision of the department of corrections, unless the sex offender review*
23 *committee determines pursuant to the requirements of this subdivision (3),*
24 *taking into account whether the person has been charged or convicted of a*
25 *criminal offense or a probation or parole violation since being placed on the*
26 *registry, that the person has successfully re-integrated into the community.*

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

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

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

7 (C) All decisions made by the sex offender review committee under
8 subdivision (3)(A) of this section shall be reviewed and approved by the
9 commissioner of the department of corrections. The agency of human services
10 shall adopt emergency rules which establish criteria for the commissioner's
11 decision.

12 (4)(A) A person convicted prior to July 1, 2009, of a crime committed in
13 any jurisdiction of the United States other than Vermont, including a state,
14 territory, commonwealth, the District of Columbia, or military, federal, or
15 tribal court, who is not under the supervision of the department of corrections
16 and is subject to sex offender registry requirements under subchapter 3 of
17 chapter 167 of Title 13, unless the sex offender review committee determines
18 pursuant to the requirements of this subdivision (4), taking into account
19 whether the person has been charged or convicted of a criminal offense or a
20 probation or parole violation since being placed on the registry, that the
21 person has successfully re-integrated into the community.

22 (B)(i) No person's name shall be posted electronically pursuant to
23 subdivision (4)(A) of this section before July 1, 2010.

24 (ii) On or before April 1, 2010, the department of public safety
25 shall provide notice of the right to petition pursuant to this subdivision (4)(B)
26 to all persons with a right to file a petition under subdivision (4)(A) of this
27 section.

28 (iii) A person seeking a determination from the sex offender
29 review committee that he or she is not subject to subdivision (4)(A) of this
30 section shall file a petition with the committee before July 1, 2010. If a petition
31 is filed before July 1, 2010, the petitioner's name shall not be posted
32 electronically pursuant to subdivision (4)(A) of this section until after the sex
33 offender review committee has ruled on the petition.

34 (iv) The petition shall be accompanied by available information
35 regarding the nature and circumstances of the offense and sentence from the
36 jurisdiction where the offense occurred. The committee may deny the petition
37 if sufficient available information regarding the nature and circumstances of
38 the offense and sentence are not provided within 90 days after the committee
39 requests the information from the petitioner.

1 ~~(C) All decisions made by the sex offender review committee under~~
2 ~~subdivision (4)(A) of this section shall be reviewed and approved by the~~
3 ~~commissioner of the department of corrections. The agency of human services~~
4 ~~shall adopt emergency rules which establish criteria for the commissioner's~~
5 ~~decision.~~

6 Sec. 3. EFFECTIVE DATE

7 (a) Sec. 1 of this act shall take effect on July 1, 2011.

8 ~~(b) Secs. 2 and 3 of this act shall take effect on passage.~~

Sec. 1. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(f) Protection of Deponents.

(1) Deponent's Counsel and Victim Advocate. A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) Depositions of Sensitive Witnesses. A person under the age of 16 or any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner, and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition, including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A.

§ 3255(a)(3)(A)–(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) Protective Orders. At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning, and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped, or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to a peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

Sec. 2. 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:

* * *

(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 only 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 more than 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:

** * **

(13) 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 of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

** * **

Sec. 3. Sec. 14 of No. 58 of the Acts of 2009 is amended to read:

Sec. 14. 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:

** * **

(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 only 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 more than 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:

** * **

(13) 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 of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

** * **

Sec. 4. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

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 ~~re-integrated~~ 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.

(4)(A) A person convicted prior to July 1, 2009, of a crime committed in any jurisdiction of the United States other than Vermont, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, 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, unless the sex offender review committee determines pursuant to the requirements of this subdivision (4), 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 (4)(A) of this section before July 1, 2010.

(ii) On or before April 1, 2010, the department of public safety shall provide notice of the right to petition pursuant to this subdivision (4)(B) to all persons with a right to file a petition under subdivision (4)(A) of this section.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (4)(A) of this section shall file a petition with the committee before July 1, 2010. If a petition is filed before July 1, 2010, the petitioner's name shall not be posted electronically pursuant to subdivision (4)(A) of this section until after the sex offender review committee has ruled on the petition.

(iv) The petition shall be accompanied by available information regarding the nature and circumstances of the offense and sentence from the jurisdiction where the offense occurred. The committee may deny the petition if sufficient available information regarding the nature and circumstances of the offense and sentence are not provided within 90 days after the committee requests the information from the petitioner.

(C) All decisions made by the sex offender review committee under subdivision (4)(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.

Sec. 5. EFFECTIVE DATE

(a) Sec. 1 of this act shall take effect on July 1, 2011.

(b) This section and Secs. 2, 3, and 4 of this act shall take effect on passage.