

2010 Legislative Wrapup

Following is a list of laws passed during Vermont's 2010 legislative session that impact victims and survivors of sexual and domestic violence.

More information is available about any of these acts – or the hundreds of other bills that didn't become law this session – on the legislative website: www.leg.state.vt.us. You can also contact Sarah Kenney at the Network Office for more information or to be added to the Network's legislative alert email list: sarahk@vtnetwork.org or 802-223-1302, ext. 105.

DEPARTMENT OF CORRECTIONS

A number of bills that passed in 2010 contain changes relating to the state Department of Corrections. New legislation directs the DOC, the courts and other stakeholders to find new ways to curtail the number of people entering the correctional system, and to reduce the number of people who are incarcerated and under community supervision by the DOC. The changes are primarily contained in S.292, "an act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees"; and in H.792, the "Challenges for Change" bill. Following is a summary list of highlights from the Corrections-related provisions in these two bills.

It is important to note that S.292 and H.792 refer repeatedly to "nonviolent misdemeanors" and "nonviolent felonies". This is a statutorily defined term that is based exclusively on whether an individual was convicted of one of the "listed crimes" that are defined in 13 VSA 5301 (7). If someone was convicted of an offense that is not "listed", then that person is generally considered "nonviolent" for the purposes of these statutes. **The definition does not take into consideration the crime for which an individual was originally charged, the underlying elements of the crime, the individual's criminal history, or the results of any risk assessments.**

Goal – Reduction in Number of People Incarcerated

- Sets a general goal for the DOC to strive to reduce the number of offenders incarcerated to 2000 or less by July 1, 2012 and to 1800 or less by July 1, 2014 (H.792)

Arrest for failure to pay fines – 13 VSA Chapter 223

- Replaces an antiquated statute regarding incarceration for failure to pay criminal fines. The new statute allows the court to find a defendant in civil contempt of court, to hold a hearing, and to order a number of sanctions for nonpayment,

including sentencing the defendant to furlough in the form of supervised work programs to pay off the debt (H.792)

Bail – 28 VSA 301

- Changes the bail statute to allow bail for people who are charged with violating conditions of probation for a nonviolent misdemeanor or nonviolent felony, if the probation violation did not constitute a new crime (existing law did not allow bail under any circumstances for people who were charged with violating a condition of their probation) (S.292)

Pre-trial Detention – 13 VSA 7554

- Directs the courts, the DOC, the State’s Attorneys, and the Defender General to work cooperatively to reduce (to the extent possible) the average number of daily detainees to 300 people or less by January 1, 2011 (daily average was 402 in the first half of FY10) (S.292)
- Creates a new “home detention program”: If a person is charged with a crime and the court orders bail, and the person then remains incarcerated for seven days without being able to make bail, then the DOC or the defendant may ask the court to order that person into home detention in a pre-approved residence with electronic monitoring. In approving a residence, the court has to consider the crime for which the individual was originally charged and the crime for which they were convicted; their criminal history record, history of violence, history of supervision and risk of flight; and whether their presence in the residence will pose any risk or undue burden to other residents or to any third parties. DOC will supervise the person according to conditions set by the court. (H.792)

Court Diversion – 3 VSA 164

- Expands adult court diversion to make it available to adults who have been charged with a first or second misdemeanor or first nonviolent felony (existing law allows diversion only for first time offenders). Also directs the Association of Court Diversion Programs to work with the Department of State’s Attorneys and the Network to develop referral criteria to screen for cases involving domestic or sexual violence or stalking. (H.792)

Sentencing Alternatives – 13 VSA 7030

- Allows the court to order offenders who have pled guilty to a nonviolent misdemeanor (“nonviolent” misdemeanor here is expanded to exclude crimes of domestic or sexual violence as prohibited under 24 VSA 1967, which is the Community Justice Center statute) or a nonviolent felony to a community reparative board. If the offender completes the reparative board program, the offender is released from supervision and does not return to court for sentencing. (H.792)

Medical Care – 28 VSA 801

- Creates a presumption that offenders admitted to correctional facilities while under medical care should be allowed to continue to take their prescription medications as long as it's in the inmate's best interest (S.292)

Release from Incarceration – 28 VSA 102

- Directs the Commissioner of Corrections to notify local and state law enforcement of name, address, conditions, and other information about people being released from incarceration on probation, parole or furlough (S.292)

Furlough – 28 VSA 808

- Directs the DOC between July 1st and September 30th 2010 to release to furlough any offenders incarcerated on 7/1/10 for nonviolent misdemeanors or felonies (except 3rd or subsequent offense of DUI) who have served their minimum sentence, have completed any court-ordered programs, and still have not been released due to lack of housing (S.292)
- Creates a new “home confinement furlough” that allows the court to sentence an offender to confinement with electronic monitoring at a pre-approved residence. In ordering home confinement, the court must take into consideration the crime for which the individual was originally charged and the crime for which they were convicted; their criminal history record, history of violence, history of supervision and risk of flight; and whether their presence in the residence will pose any risk or undue burden to other residents or to any third parties (S.292)
- Expands reintegration furlough (available to *all* offenders) from 90 days to 180 days prior to completion of minimum sentence, at the commissioner's discretion and in accordance with administrative rules (H.792)

Probation – 28 VSA 205 and 256

- Clarifies legislative intent that term probation and administrative probation should be the default probationary sentence for all offenses that qualify (S.292)
- Expands term probation to also apply to nonviolent felonies, so that the underlying term of probation should be no more than four years for any nonviolent felony. The only crimes for which there will now be a default of probation for an indefinite period (until further order of the court) are felony offenses that are “listed” crimes according to 13 VSA 5301(7) (H.792)
- Allows the DOC to establish graduated sanctions for probation violations that don't constitute a new crime. The DOC must create rules to establish guidelines for graduated sanctions as an alternative to arrest or citation (H.792)
- Requires the DOC to petition the courts for discharge from probation for all offenders who on July 1, 2010:

- Have served at least 2 years of an *unlimited term* of probation for a nonviolent misdemeanor and have completed all court-ordered services/programs designed to reduce risk of recidivism; and
- Are serving *term probation* for a nonviolent misdemeanor or nonviolent felony (except 3rd or subsequent offense of DUI) and have less than six months left in their term of probation, if they've completed all court-ordered programs designed to reduce recidivism (S.292)

Study

- Directs the DOC, the courts, the state's attorneys, and the defender general to collaborate on strategies to reduce the number of people entering DOC custody and to minimize the time served of those who do enter DOC custody, consistent with public safety. Group is to report to legislature on potential strategies by March 15, 2011 (S.292)

Children of Incarcerated Parents

- Allows DOC to request information from people entering the system about their minor children (S.292)
- Directs the DOC to adjust policies to promote quality relations between inmates and their families as appropriate, including eliminating any policies that limit phone calls or visitation with children as a disciplinary measure (S.292)

Miscellaneous

- Prohibits the DOC from closing or “substantially” reducing services at a correctional facility or field office in fiscal year 2011 (H.792)
- Requires the DOC Commissioner to give priority for re-investment funds to the four communities which have the highest number of people in DOC custody and under supervision (H.792)
- States legislative findings that state and local interagency teams for persons with serious functional impairment (SFI) are the best model for integrating offenders with SFI back into the community (S.292)
- Expands the internet sex offender registry to include people convicted of attempts (S.292)
- Exempts sex offenders with developmental disabilities from having their address listed on the internet sex offender registry if they are in a secure residential facility (S.292)
- Repeals part of the audit of the state's sexual abuse response system that was ordered in S.13 (2009) and asks the VT Network and the state auditor to develop a plan for an audit that will protect the confidentiality of victims (S.292)
- Directs ADAP to develop a uniform screening tool for public inebriate screeners (S.292)

- Adds the DCF Commissioner onto the Special Investigative Unit Grants Board (S.292)
- Allows former employers to release factual information to other prospective employers about a prospective employee's background if their past conduct has jeopardized the safety of a minor or a vulnerable adult, regardless of any confidential employment separation agreement (S.292)
- Requires all prospective employees who may have unsupervised access to minor children or vulnerable adults to sign a pre-employment waiver allowing exchange of information about their past conduct, and provides a mechanism for that information to be shared between past and prospective employers (S.292)

Reinvestment

- The budget (H.789) and H.792 call for reinvestment of \$6,350,500.00 of the savings that are anticipated from the changes contained in S.292 and H.792
- H. 792 directs that the goal of these investments is to reduce the three-year recidivism rate from 53 percent (current level) to 40 percent by FY2014, and requires DOC to set benchmarks for each investment to prove how they're reducing recidivism. H.792 lays out a plan for \$3,164,500 in initial investment (before the savings are actually realized):
 - \$1,324,000 for transitional housing beds for offenders reentering the community
 - \$80,000 for prison treatment programs
 - \$650,000 for grants to Community Justice Centers (where they exist, and to similar entities where they don't) for a continuum of services to prevent people from entering the criminal justice system and help offenders reentering the community
 - \$200,000 to the judiciary for community service providers (like case management, substance abuse treatment or diversion)
 - \$910,500 for purchase of electronic monitoring equipment and additional field staff for offenders released to the community

Effective Date: Varies; most provisions took effect July 1, 2010

COURT RESTRUCTURING – H.470/Act 154 – 4 VSA 1 (and many other statutes)

The legislature enacted sweeping reforms to the judicial system in response to the recommendations of the Commission on Judicial Operation. The commission was created by the legislature in 2008 and was directed to study how best to reform the court system in order to provide judicial services more efficiently and effectively and to save \$1 million.

This Act unifies Vermont's judiciary and brings it all under the administrative control of the Supreme Court. There are now three divisions: the Appellate Division, which is the Supreme Court; the Judicial Bureau (which handles traffic citations and other lower-level judicial issues); and the Trial Division, which is the Superior Court and which in turn has separate divisions for

Family, Criminal, Civil, and Environmental (and, as of February 1, 2011, Probate Court will also become a division of the Superior Court).

More information about the new structure and the jurisdiction of the new divisions is available on the Vermont Judiciary website at: <http://www.vermontjudiciary.org/GTC/default.aspx>

The Commission also proposed eliminating many of the functions of assistant judges and dramatically reducing the number of probate judges; the legislature largely rejected these proposals. Probate court judges will now need to be attorneys (although judges sitting currently are exempt from this requirement) and will receive a reduction in pay. Assistant judges will retain most of their duties, although new assistant judges will be required to sit alongside an acting superior court judge for a minimum of 100 hours.

More detail on changes will be forthcoming.

Effective Date: Most changes took effect July 1, 2010; Probate Court will become part of the Superior Court on February 1, 2011.

STATUTE OF LIMITATIONS – S.165/Act 99 – 13 VSA 4503

This act amends the law governing the statute of limitations on criminal prosecutions to clarify that if the defendant knowingly and voluntarily waives the statute of limitations with the consent of the prosecution, then the court still has jurisdiction even after the statute has expired.

Effective date: July 1, 2010

MILITARY PARENTS' RIGHTS ACT – H.533/Act 69 – 15 VSA Chapter 11, new subchapter 4a
Establishes court procedures to address parental rights and responsibilities and parent-child contact when a military parent is deployed for service and has active or pending court orders related to custody or visitation. The new law directs the court, upon motion of one of the parents, to enter a temporary order modifying parental rights and responsibility or parent-child contact for the duration of the deployment and for a pre-established transition period after deployment ends. The law also prevents the court from entering any final order until 90 days after deployment has ended, and clarifies that deployment in and of itself does not constitute the “real, substantial, and unanticipated change in circumstances” necessary to modify parental rights and responsibilities or contact (15 VSA 668). Also allows the deploying parent to delegate parent-child contact rights to another person for the duration of the deployment, if the court finds that it’s in the child’s best interest.

Effective Date: March 3, 2010

HARASSMENT AND HAZING – H.648/Act 106 – 16 VSA 178 (new)

Requires the Board of Trustees or governing body of each postsecondary educational institution operating in Vermont to adopt and enforce a policy establishing that harassment is an unlawful form of discrimination, as well as procedures to prevent harassment and address complaints of harassment. Also requires postsecondary educational institutions to adopt and enforce policies prohibiting hazing, including penalties or sanctions for hazing behavior.

Effective May 13, 2010; schools had to have policies in place by July 1, 2010

STATE RECOGNITION OF NATIVE AMERICAN INDIAN TRIBES – S.222/Act 107 – 1 VSA 851

Revamps the membership and operation of the Vermont Commission on Native American Affairs and the criteria and process for official state recognition of Native American Indian tribes. Also adds language acknowledging the “long-standing existence in Vermont of Native American Indians who predated European settlement”.

Effective Date: May 14, 2010

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT – S.161/Act 108 – 20 VSA 2065 (new); 16 VSA 252 and 255; 20 VSA 2056; 33 VSA 5721-5733 (new); and more

Officially ratifies the National Crime Prevention and Privacy Compact related to interstate sharing of criminal history records information. This new law also contains many changes to release of criminal history records for various employment purposes, including providing complete out-of-state conviction records for school employees. The bill also updates Vermont’s participation in the Interstate Compact for Juveniles, which governs interstate transfer of juveniles who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others, or who have run away from home.

Effective Dates: July 1, 2010, except sections related to commercial drivers’ licenses, which take effect July 1, 2011

HUMAN TRAFFICKING - S.272/Act 85

Creates a statewide Human Trafficking Task Force charged with raising public awareness about human trafficking within the state and across state and international borders, identifying resources for the victims of human trafficking, recommending to the public ways to identify and report acts of human trafficking, and making findings and recommendations regarding those efforts to the general assembly. The Task Force must report back to the legislature by November 15, 2010 with recommended statutory changes, and by January 15, 2011 with its full report.

Also charges the Commissioner of Public Safety to survey the readiness of Vermont's law enforcement community to respond to human trafficking, and to report to the statewide Law Enforcement Advisory Board, who will in turn make recommendations to the legislature.

Effective Date: April 27, 2010

VOYEURISM – S.218/Act 111 – 13 VSA 2605

Clarifies that “circumstances in which a person has a reasonable expectation of privacy” include occasions when someone knowingly disrobes in front of someone else, but doesn't know that their activity is being recorded. The bill also adds a new section to prohibit recording someone without their knowledge and consent when they're engaged in a sexual act (even if no “intimate areas” are visible in the recording).

It also changes the language to state that no person shall “display or disclose to a third party”, instead of the original term “disseminate”. This new language is a response to a defense attorney in Middlebury who successfully argued that “disseminate” means to distribute broadly, and the perpetrator in the case only showed the video to a few people.

Effective Date: July 1, 2010

IGNITION INTERLOCK DEVICES – S.103/Act 126 – 23 VSA 1200

This new law allows for ignition interlock devices to be used (beginning in July of 2011) with most DUI offenders facing civil suspension of their license. Ignition interlock devices may be used, after a period of complete license suspension, if the person did not refuse reasonable requests for field sobriety testing at the time of the offense, and only if the underlying driving offense did not involve a collision resulting in serious bodily injury or death to another person. Ignition interlock is a device that is capable of measuring a person's alcohol concentration and that prevents a motor vehicle from being started by a person whose alcohol concentration is 0.02 or greater.

The new law sets up guidelines for application of ignition interlock devices and directs the commissioner of the DMV to establish rules governing their use. It also contains a provision that states: “a person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. A person adjudicated of a violation of this subsection shall be subject to a civil penalty of \$500.00.”

Effective Date - the DOC and DMV will begin a pilot program from January to July of 2011, and the law will take effect statewide on July 1, 2011.

CHALLENGES FOR CHANGE (non-Corrections provisions) – H.792/Act 146

The Challenges for Change provisions related specifically to the Department of Corrections are detailed separately above. The Challenges bill also contains many provisions related to the Agency of Human Services and its other departments.

Broadly, the act requires:

“(a) The client-centered, results-based, human services challenge to the state’s human service administrators, employees, and service providers is to redesign delivery of the state’s human services programs and health care system as a client-centered, integrated system that improves outcomes within budget constraints. This challenge: focuses on maintaining or improving outcomes for populations served by the agency of human services, while spending less in fiscal year 2011 than in fiscal year 2010 and less in fiscal year 2012 than in 2011 [elsewhere the Act specifically states that the agency of human services shall set an agency-wide *savings target* of \$23.8 million in general fund in fiscal year 2011 and \$41.4 million in general fund in fiscal year 2012] , by redesigning the delivery of services to be more efficient, interconnected, and targeted to achieve the essential outcomes. The populations focused on in this act are elders; individuals with disabilities, mental health needs, or substance abuse issues; families, including children, with multiple needs; and individuals involved with or at risk for significant involvement with the corrections system.”

The Act also requires: “The agency of human services shall engage the direct participation of service recipients, their families, service providers, and other stakeholders in the identification and development of new proposals and the thorough evaluation and ongoing design and redesign of all of the proposals contained in the agency of human services addendum to the Challenges for Change Progress Report dated March 30, 2010....”

Outcomes related to Families with Children [Sec. C7. RESTATEMENT OF OUTCOMES RELATING TO FAMILIES, INCLUDING CHILDREN, WITH MULTIPLE NEEDS]

- (1) Children, families, and individuals are engaged in and contribute to their community’s decisions and activities.
- (2) Pregnant women and children thrive.
- (3) Children are ready for school.
- (4) Children succeed in school.
- (5) Children live in safe, nurturing, stable, supported families.
- (6) Youths choose healthy behaviors.
- (7) Youths successfully transition to adulthood.
- (8) Families and individuals live in safe and supportive communities.
- (9) Adults lead healthy and productive lives.
- (10) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.
- (11) Families and individuals move out of poverty through education and advancement in employment.

The Challenges Act lists outcomes for each of the AHS focus areas listed above, and details several changes to AHS programs within each of the focus areas. DCF initiatives include:

(1) modernizing the eligibility determination system in the department for children and families;

(2) pursuing a consolidated and coordinated approach to employment services under a single entity called “creative workforce solutions”;

(3) pursuing savings in the budgets of multiple departments, including the department of Vermont health access, department of mental health, department of health, department of disabilities, aging, and independent living, and department for children and families, resulting from reduced lengths of stay in out-of-home placements of children accomplished through an increase in early intervention, family treatment, and other services designed to prevent or reduce the acuity of the situation resulting in the child’s out-of-home placement. The agency shall redesign service delivery in order to provide intensive services to children and families before a child needs an out-of-home placement. “Out-of-home placements” includes inpatient hospitalizations, residential care, and foster care;

(4) reducing the length of time children are hospitalized through utilization reviews by the department of Vermont health access;

(5) reducing administrative burdens on providers of children’s services by simplifying documentation and reporting requirements across departments, including the department for children and families, the department of mental health, the alcohol and drug abuse program, and the department of disabilities, aging, and independent living, including removing prior authorization requirements for Healthy Babies, Kids, and Families if feasible and allowable under federal law;

(6) establishing pilot programs for integrating children’s services as provided for in Sec. C9 of this act;

(7) planning necessary to convert Woodside juvenile rehabilitation center into a treatment center which meets the requirements for Medicaid reimbursement as provided for in Sec. C10 of this act;

(8) creating specialized case management in Reach Up as provided for in Sec. C12 of this act;

(9) increasing enforcement of child support in order to increase the amount paid to families as provided for in Secs. C13 through C22 of this act; and

(10) integrating intake and program operations between the department of disabilities, aging, and independent living and the department of health for children’s services.

More detail will be forthcoming from AHS and DCF about specific proposals to achieve these outcomes within the stated budget limitations. Detailed documents about the legislation is also

available on the legislature's website at
<http://www.leg.state.vt.us/jfo/Challenges%20for%20Change.htm>.

Effective Date: Most provisions took effect July 1, 2010

BUDGET

Although the state budget is facing enormous shortfalls and cuts were proposed in many key human services programs upon which survivors of domestic and sexual violence rely, the legislature managed to avoid making the worst of the cuts. The general fund and special fund allocations for direct services to victims and survivors were level-funded. This funding goes to the VT Center for Crime Victim Services and is passed to Member Programs of the Network, who provide direct services to victims of domestic and sexual violence, as well as prevention education in local communities.

Voices for Vermont's Children has excellent information and analysis about the budget and Challenges for Change as they relate to services for children, available on their website here:
<http://voicesforvermontschildren.createsend1.com/T/ViewEmail/r/457E92F93D27FDFC/DF287D7077440C322540EF23F30FEDED>

We owe many thanks to our many friends and allies in the Statehouse for prioritizing funding for victim services, especially in this very difficult economic climate.

We also owe a debt of gratitude to the hundreds of Vermonters – including victims and survivors of domestic and sexual violence – who spoke eloquently and courageously about the impact of proposed budget cuts on their lives. Their collective voice allowed the legislature to weigh the real costs of cutting the services that so many Vermonters rely on for their health and safety.