

2011 Legislative Wrap-up

Following is a list of laws passed during Vermont's 2011 legislative session that impact victims and survivors of sexual and domestic violence. Relevant statutes are noted in italics. 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 for more information or to be added to the Network's legislative alert email list: sarahk@vtnetwork.org or 802-223-1302, ext. 105.

HUMAN TRAFFICKING – H.153/Act 55

13 VSA 2651 to 2663 (new), 13 VSA 4501, 13 VSA 9, 13 VSA 5301, 13 VSA 7043, 13 VS 3255, 13 VSA 5401 and 5411a, 13 VSA 5322, 13 VSA 5363, VRCP Rule 15

Creates a series of new laws criminalizing labor trafficking and sex trafficking and creates protections and services for victims of trafficking. The bill:

- creates the crimes of human trafficking and aggravated human trafficking (both of which are “listed crimes”, have no statute of limitations, and those convicted of these crimes will be added to the internet sex offender registry);
- creates the crimes of patronizing or facilitating human trafficking and solicitation;
- provides trafficking victims immunity from prosecution for lewdness and prostitution offenses based on conduct committed as a result of the trafficking, provides an affirmative defense for victims charged with other crimes as a result of trafficking, and provides immunity for minors involved in prostitution so that they will not be charged for prostitution offenses in criminal court;
- provides restitution for victims of human trafficking, including attorney fees;
- requires the VT Department of Labor (DOL) to provide notices offering services to victims to be posted in workplaces and requires the DOL to develop and implement a trafficking awareness campaign for Vermont employers;
- creates a private cause of action for victims of human trafficking to sue their traffickers;
- requires law enforcement and prosecutors to refer victims to services – including assistance with immigration paperwork and notice to victim services providers – if they suspect someone may be a victim of trafficking; and
- allows the VT Center for Crime Victim Services to convene a task force to develop a statewide protocol for responding to victims of human trafficking, including a public awareness campaign.

This law also contains three separate victim service provisions that aren't specific to human trafficking. The first provides an additional layer of confidentiality for victims of crime who receive state funds through the victims' compensation fund, the restitution fund, and those enrolled in the domestic and sexual violence survivors' transitional employment program. The second provision makes some changes to the crime victims' restitution unit. The third eliminates the sunset on the 2009 law that prohibited most depositions of minor victims of sexual offenses. This protection from depositions was slated to expire in July of 2011; this bill will keep the protection as a permanent part of the Rules of Criminal Procedure (VRCP 15).

Effective Date: July 1, 2011

UNIFORM CHILD CUSTODY JURISDICTION ENFORCEMENT ACT (UCCJEA) – H.88/Act 29
15 VSA Chapter 19 (repealed), 15 VSA Chapter 20 (new)

This law replaces the existing Uniform Child Custody Jurisdiction Act (UCCJA); it revises the law on interstate child custody jurisdiction in light of federal enactments and inconsistent case law among various jurisdictions. The law provides standards for which states can exercise original jurisdiction over a child custody determination, enunciates a standard of continuing jurisdiction, and clarifies modification jurisdiction. Other aspects of the UCCJEA harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens. The law also provides for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement. Vermont is one of the last two states to pass the newer UCCJEA.

Effective Date: July 1, 2011

CHILD SUPPORT ENFORCEMENT – S.101/Act 32
15 VSA 606(d), 33 VSA 4103

This law reduces the surcharge on unpaid child support from 12% to 6%; provides a mechanism for the court to discharge all or part of a surcharge upon a finding that the obligated parent lacked the ability to comply with the underlying support obligation, if it serves the interest of justice; creates a child support enforcement working group that will report recommendations to the general assembly; and increases the number of child support cases that may be deemed federal IV-D cases for the purposes of administration by the Office of Child Support.

Effective Date: July 1, 2011, except for the IV-D changes which take effect January 1, 2012

SEXUAL EXPLOITATION OF A MINOR AND THE SEX OFFENDER REGISTRY – S.2/Act 31
13 VSA 5401 and 5411a, 16 VSA 255, 4 VSA 952, 20 VSA 2056b

Remedies a mistake in previous legislation that created the crime of sexual exploitation of a minor – clarifies that both misdemeanor and felony sexual exploitation of a minor offenses result in the offender being placed on the sex offender registry, but only felony violations of the statute result in the offender being placed on the *internet* sex offender registry.

Effective Date: May 17, 2011

STATUTE OF LIMITATIONS FOR SEXUAL ABUSE OF A VULNERABLE ADULT – H.236/Act 6
13 VSA 4501

Increases the statute of limitations for crimes of sexual abuse of a vulnerable adult by including these offenses in the list of crimes subject to a six year statute of limitations. The list already includes sexual abuse of children and other sexual offenses.

Effective Date: July 1, 2011

JURISDICTION OF CRIMES COMMITTED WHEN DEFENDANT WAS UNDER AGE 18 – S.58/Act 16
33 VSA 5204a

Clarifies the authority of the state to institute criminal proceedings against an adult who committed a crime while a minor – by clarifying that under the proper circumstances and for serious offenses, the state may bring charges against a person 18 years of age or older who committed a crime before turning 18.

Effective Date: May 9, 2011

RESPECTFUL LANGUAGE REFERRING TO PEOPLE WITH DISABILITIES – S.90/Act 24

Directs the Agency of Human Services to convene a working group to recommend guidelines for using respectful language when referring to people with disabilities. The working group will identify words that should not be used in state statutes, regulations and policies and will suggest alternative language that reflects positive views of people with disabilities.

Effective Date: May 11, 2011

EFFECTIVE STRATEGIES TO REDUCE CRIMINAL RECIDIVISM– S.108/Act 41
13 VSA 7031, 28 VSA 808, 28 VSA 122

Also known as the “War on Recidivism Act”, this law proposes to reduce recidivism by releasing nonviolent offenders from incarceration and more precisely targeting correctional services. Some highlights include:

- A rewrite of the furlough statutes making them easier to read and granting the Department of Corrections (DOC) the ability to grant furlough without a court order before an offender has served her or his minimum sentence. This can only happen if:
 - the offender was convicted of an “eligible misdemeanor”, which is defined to *exclude* most crimes of domestic and sexual violence (the list excludes most listed crimes, including domestic assault, stalking, and violation of a protection order, and some others such as voyeurism, simple assault and prohibited acts);
 - the DOC finds, based on a risk assessment, that the offender poses a low risk to victim or public safety;
 - the DOC finds that an alternative to incarceration is likely to reduce the risk of recidivism;
 - the court at sentencing does *not* make written findings that prevent the DOC from releasing the offender prior to serving his or her minimum sentence [the court will be able to preemptively override the DOC’s furlough ability, but this provision will expire in January of 2013];
- A Nonviolent Misdemeanor Sentence Review Committee charged with examining sentences for “nonviolent misdemeanors” (defined broadly to include the crimes of simple assault, disorderly conduct, prohibited acts, voyeurism and more). The committee is comprised of seven members: three current and former legislators, 2 members appointed by the House and Senate, the governor’s special assistant on corrections, and the administrative judge. They will report by December 1, 2011 to the legislature with recommendations about statutory sentences for “nonviolent misdemeanors” and whether incarceration for such misdemeanors may be counterproductive;
- A new standard measure of recidivism for the DOC – the state will now measure recidivism as any offender who was originally sentenced to more than one year of prison, who is released after serving that sentence and then re-convicted within the next 3 years and is sentenced again for 90 days or more;
- Place-based strategies – directing the DOC to work with the VT League of Cities and Towns and local law enforcement to develop strategies that coordinate services provided to offenders in communities with disproportionate numbers of residents in the custody of corrections;
- Early screening – directing the courts, the DOC, prosecutors and the Defender General to develop a statewide plan for screening all persons charged with a violent misdemeanor or any felony for risks and needs as early as possible;
- Increasing use of home confinement as a sentencing option – directing criminal justice system entities to raise awareness of home confinement as an option;
- Suspension of video arraignments;
- A feasibility study of how to provide better health care services for people who are incarcerated, at a cost savings to the state;
- A series of evaluations and recidivism reduction studies to be performed by the VT Center for Justice Research. Research will focus on evidence-based initiatives related to

swift and sure delivery of sanctions and effective interventions for offenders.
Recommendations will be delivered to the legislature by December 1, 2011.

Effective Date: July 1, 2011, except the indeterminate sentencing clarification (Section 2) which took effect on May 20, 2011, and the furlough provisions which take effect on July 1, 2011 but the ability for the court to override the DOC's furlough power will sunset on April 1, 2013.

CYBERBULLYING (in Miscellaneous Amendments to Education Laws) – S.100/Act 58

16 VSA 11, 16 VSA 1162

Included in the miscellaneous education bill was a provision that allows schools to take action if students are being harassed or bullied by electronic means. This includes electronic bullying and harassment incidents that happen in school as well as those that happen out of school if the school administrators can demonstrate that the incident poses a clear and substantial interference with another student's right to access educational programs.

Effective Date: May 31, 2011

ASSAULT OF A HEALTH CARE WORKER – S.30/Act 26

13 VSA 1028

Adds health care workers to the law that provides enhanced penalties for people convicted of committing assault or aggravated assault against certain officials. The law now applies to assaults committed against law enforcement officers, firefighters, health care workers, and members of emergency medical personnel.

Effective Date: May 12, 2011

DRIVING UNDER THE INFLUENCE – H.264/Act 56

23 VSA 1130, 1201, 1203, 1205, 1210, 1212, 1213, 1220a, 1220b (new); 13 VSA 5239; 21 VSA 308 (new), 3 VSA 164, 14 VSA chapter 114 (new)

Makes a number of changes to the state's laws related to driving under the influence of alcohol and other drugs.

This law also contains a number of other provisions not directly related to DUI. These include:

- Directing the court administrator to conduct a compensation study of the probate division of superior court for use in the 2013 appropriations process;
- Creates a committee to study the number of interested parties who must be notified at the start of a probate proceeding involving a decedent's estate;
- Moves the blood and breath alcohol testing program from the Department of Health to the Department of Public Safety and creates a special fund to support the testing;

- Provides limitations on the liability of employers who work with children or vulnerable adults who in good faith provide information to a prospective employer about a former employee's job-related performance (21 VSA 308 – new) and repeals the previous disclosure requirements that were passed in 2010;
- Creates a minor guardianship study committee to make recommendations related to jurisdiction over proceedings involving guardianship of minors;
- Provides statutory confidentiality for records of cases referred to diversion programs. Confidentiality remains in place unless the diversion board does not accept the case, the person declines to participate, or the person does not successfully complete diversion;
- Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, a national model code related to guardianship proceedings for adults.

Effective Date: Varied: some provisions took effect on May 31, 2011; others on July 1, 2011; and others will take effect on March 1, 2012

PUBLIC RECORDS – H.73/Act 59

1 VSA 315-320, 3 VSA 218, 9 VSA 4113

Makes changes to the state's public records laws, including allowing the court to order public agencies to pay attorneys' fees to people who successfully sue public agencies to gain access to records. The bill also creates a Public Records Legislative Study Committee to review the requirements of the public records act and all of its exemptions. The study committee is also tasked with reviewing whether the public records act should be amended "to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function". This expanded definition could include private nonprofit organizations providing services through state funding.

Effective Date: July 1, 2011

BUDGET – H.441/Act 63

Although the state budget is facing enormous shortfalls and cuts were proposed in many key human services and mental health programs upon which survivors of domestic and sexual violence rely, the legislature managed to avoid making the worst of the cuts. Many services in local communities will continue to face enormous pressure, however, after the last few years of incremental budget cuts, and the fiscal picture for the next budget year looks bleak.

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.

The budget each year also contains policy directives related to appropriations. Some policy highlights from this year's budget:

- The director of the State's Attorneys Association is directed to deliver a report to the legislature about Special Investigation Units (SIUs) statewide. The report shall include information from each SIU about the number of cases investigated, where the reports of abuse come from, and the funding sources for each SIU. The report shall be made in consultation with law enforcement agencies, DCF and victims' organizations, and shall make recommendations for changes in practice that would improve SIUs' effectiveness;
- The secretary of AHS in consultation with the department of health access and the department of health shall report to the joint fiscal committee in September 2011 on the existing programs and scope of services, including case management services, available to pregnant women identified as high-risk;
- Creation of a task force to study long-term care needs of Vermont veterans;
- The commissioner of the Vermont Health Access department is directed to implement the Medicaid family planning state option from the federal Affordable Care Act of 2010 (the federal health care reform law);
- Language permitting DCF to continue the flexible housing assistance program within the General Assistance program, providing more flexibility in allocating GA funds to best meet local housing needs;
- Requires AHS to develop a baseline in order to measure results of investments in emergency shelter grants and case management services for homeless populations, including homelessness prevention outcomes;
- An appropriation (\$792,000) to DCF's Office of Economic Opportunity to grant to community agencies for homeless assistance. Grant awards must be made with assistance from the Coalition of Homeless Vermonters;
- The DOC shall develop a plan regarding use of uniforms in correctional facilities and present it to the joint corrections oversight committee this fall. The DOC shall also report on the proposed distribution of justice reinvestment funds.

We owe many thanks to our many friends and allies in the Statehouse for prioritizing funding and support 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.