

VERMONT **GENERAL ASSEMBLY**

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Title 13: Crimes And Criminal Procedure

Chapter 167: Crime Victims

Subchapter 1: Compensation To Victims Of Crime

§ 5351. Definitions

As used in this chapter:

- (1) "Board" means the Victims Compensation Board established under this chapter.
- (2) "Dependent" means the victim's spouse or a person who is legally dependent for support upon a victim.
- (3) "Crime" includes delinquent acts and an act of terrorism, as defined in 18 U.S.C. § 2331, committed outside the United States against a resident of this State.
- (4) "Injury" means actual bodily harm or pregnancy, or emotional harm resulting from the crime.
- (5) "Pecuniary loss" means, in the case of a victim, the amount of medical or medically related expenses, loss of wages, and any other expenses that the Board feels became necessary as a direct result of the crime. Medical or medically related expenses may include, but are not limited to, the costs of individual or family psychological, psychiatric, or mental health counseling and the costs of replacing or repairing eyeglasses, hearing aids, dentures, or any prosthetic devices that were taken, lost, or destroyed during the commission of the crime. In the case of a dependent, "pecuniary loss" means the cost of psychological, psychiatric, or mental health counseling, funeral expenses for the victim, and, upon demonstration of financial hardship, temporary living expenses.
- (6) "Unreimbursed pecuniary loss" means a pecuniary loss:
 - (A) that is not covered by medical, hospitalization, or disability insurance or workers' compensation; and
 - (B) that has not been ordered by the court to be restored to the victim or dependent by the person who caused the loss; or
 - (C) that has been ordered by the court to be restored to the victim or dependent but has not been paid by the person who caused the loss.
- (7) "Victim" means:
 - (A) a person who sustains injury or death as a direct result of the commission or attempted commission of a crime; or
 - (B) an intervenor who is injured or killed in an attempt to assist the person described in subdivision (A) of this subdivision (7) or the police; or

(C) a surviving immediate family member of a homicide victim, including a spouse, domestic partner, parent, sibling, child, grandparent, or other survivor who may suffer severe emotional harm as a result of the victim's death as determined on a case-by-case basis in the discretion of the Board; or

(D) a resident of this State who is injured or killed as the result of a crime committed outside the United States.

(8) "Profits from crimes" means:

(A) any property obtained through or income generated from the commission of a crime in which the defendant was convicted;

(B) any property obtained by or income generated from the sale, conversion, or exchange of proceeds of a crime, including any gain realized by such sale, conversion, or exchange;

(C) any property that the defendant obtained or any income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge acquired during the commission of or in preparation for the commission of the crime, as well as any property obtained or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange; and

(D) any property defendant obtained or any income generated from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 1991, No. 107, § 2; 1995, No. 22, § 1; 1997, No. 61, §§ 56a, 56b; 2003, No. 92 (Adj. Sess.), § 3, eff. April 13, 2004; 2007, No. 173 (Adj. Sess.), § 1; 2009, No. 55, § 1, eff. June 1, 2009.)

§ 5352. Victims Compensation Board

(a) The Victims Compensation Board is established for the purpose of awarding compensation to victims of crimes and to their dependents. The Board shall consist of five members appointed by the Governor as follows: one physician licensed to practice in this State, one attorney admitted to practice in this State, one individual who is a crime victim, and two public members. Each member shall serve for a term of three years. A vacancy shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(b) The Board shall function independently. In order to maximize eligibility for federal reimbursement, the Center for Crime Victim Services shall coordinate the Victims Compensation Program with other programs compensating victims of crime, including offender restitution and counseling costs for victims of child sexual abuse.

(c) The Board shall meet at least monthly to review and determine applications. Members of the Board are entitled to compensation and expenses as provided under 32 V.S.A. § 1010.

(d) The Board shall adopt rules under 3 V.S.A. chapter 25 necessary to carry out the purposes of this chapter, including rules relating to evaluation and determination of awards under this chapter.

(e) The Board may employ such staff as needed to carry out the provisions of this chapter. Staff retained by the Board shall not be considered State employees. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 1991, No. 263 (Adj. Sess.), § 3; 2015, No. 97 (Adj. Sess.), § 77.)

§ 5353. Application for compensation

(a) A victim or a dependent of a victim shall, upon application, be eligible for compensation if:

(1) a law enforcement official has filed a report concluding that a crime was committed which resulted in the injury or death of the victim; and

(2) the crime was committed in this State; or

(3) the victim is a Vermont resident, the state in which the crime occurred does not have an eligible crime Victims Compensation Program and the applicant would have been eligible for compensation under this chapter if the crime had been committed in this State; or

(4) the victim is a Vermont resident who is injured or killed by an act of terrorism outside the United States, to the extent that compensation is not otherwise available under federal law.

(b) Victims of crimes subject to federal jurisdiction, and their dependents, shall be eligible for compensation on the same basis as victims of State crimes.

(c) The application for compensation shall be signed by the applicant and shall contain at least the following information which shall be provided subject to the penalties of perjury:

(1) A description of the date, nature, and circumstances of the crime.

(2) A complete financial statement, including pecuniary losses and the extent to which the applicant has been or may be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury.

(4) When reasonably available, copies of all law enforcement reports and reports from all health care providers who treated or examined the victim at the time of or after the crime or who treated or examined the dependent.

(5) The applicant's Social Security number for the purpose of making cash payment to the applicant in accordance with section 5356 of this title.

(d) In any case in which the person entitled to compensation under this chapter is a minor or is mentally incompetent or unable to apply because of his or her physical condition, the application may be made on the person's behalf by a parent, spouse, guardian, or other person authorized to administer the estate.

(e) In any case in which a victim otherwise eligible for compensation under this chapter dies without making an application, the Board may, upon application, award medical or medically related expenses to the victim's estate.

(f) The Board may award funeral expenses to the next of kin of a deceased victim who is not survived by a dependent.

(g) A victim or a dependent of a victim shall be eligible for compensation for pecuniary losses sustained as a result of a crime that occurred after July 1, 1987 if the losses occurred on or after July 1, 1990.

(h) A victim who is under the age of 18 at the time the application for compensation is filed shall be eligible for compensation for pecuniary losses sustained as a result of a crime, no matter when the crime occurred, if the losses occurred on or after July 1, 1990.

(i) A victim shall be eligible for compensation for pecuniary losses sustained as a result of a crime which occurred before July 1, 1987 if at the time of application the case is being investigated or is being prosecuted. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 1991, No. 107, §§ 1, 3, 5; 1997, No. 147 (Adj. Sess.), § 53; 2005, No. 162 (Adj. Sess.), § 2, eff. Jan. 1, 2007; 2007, No. 173 (Adj. Sess.), § 5.)

§ 5354. Review of applications

(a) The Board shall review applications to determine whether compensation should be awarded under this chapter.

(b) If, in the opinion of the Board, a report by an impartial medical expert relating to the applicant's health care history, the applicant's condition after the injury or the cause of the victim's death would be of material assistance, the Board may order such an examination and report, at the Board's expense.

(c) In making its determination, the board shall consider all relevant information presented to the Board. (Added 1989, No. 214 (Adj. Sess.), § 1.)

§ 5355. Approval or rejection of application

(a) After review of the evidence relevant to the application for compensation, the Board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime an injury occurred that resulted in a pecuniary loss to the victim or the dependent.

(b) An application for assistance shall be denied if any of the following apply:

(1) The application was not made within the period of time permitted for commencing prosecution of the crime. The Board may extend the time for filing for good cause shown.

(2) The victim violated a criminal law of this State that caused or contributed to the victim's injuries or death.

(c) If the Board intends to deny an application, the Board shall send the applicant written notice of the decision personally or by certified mail. The notice shall include a statement of the reasons for the action and shall advise the applicant that the applicant may file a petition with the Board for review of its preliminary decision within 30 days of the date on which the notice is mailed. After the hearing, the Board shall affirm or reverse the preliminary denial, explaining the reasons therefor in writing.

(d) The decision of the Board shall be final. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 1991, No. 107, § 4.)

§ 5356. Amount of compensation

(a) If the application is approved, the Board shall authorize cash payments, not to exceed \$10,000.00, to or on behalf of the applicant, equal to the unreimbursed pecuniary loss directly resulting from the injury or death of the victim. Applications approved in any fiscal year shall not exceed funds appropriated and authorized in that fiscal year for this purpose.

(b) Funds available to the Board for payments include fees collected and deposited by the court into the Victims Compensation Fund as described in section 7282 of this title and monies from inmate labor contributions from the prison industries enhancement program or from any other source.

(c) The Board may reimburse health care facilities and health care providers as defined in 18 V.S.A. § 9402 at 60 percent of the billed charges for compensation claims for uninsured crime victims who do not qualify for the hospital's patient assistance program, Medicaid, or Medicare. The health care facility or health care provider shall not bill any balance to the uninsured crime victim. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 1995, No. 63, § 53; 2007, No. 173 (Adj. Sess.), § 2; 2015, No. 34, § 2, eff. May 26, 2015.)

§ 5357. Subrogation; lien; disposition of proceeds

The State shall be subrogated to the rights of the victim, assignee, heir, or dependent to whom cash payments are granted to the extent of the cash payments granted, less the amount of any fine imposed by the court on the perpetrator of the crime. The State shall have a lien therefor and may commence an action or intervene in any action to protect and enforce the lien. Such subrogation rights shall be against any person liable for the pecuniary loss. (Added 1989, No. 214 (Adj. Sess.), § 1; amended 2017, No. 107 (Adj. Sess.), § 1, eff. April 19, 2018.)

§ 5358. Duties of law enforcement agency

Every law enforcement agency shall inform victims of crimes and their dependents of the provisions of this chapter and provide application forms to persons who desire to seek compensation. The Board shall provide application forms and other information which local law enforcement agencies may require to comply with this section. (Added 1989, No. 214 (Adj. Sess.), § 1.)

§ 5358a. Application information; confidentiality

(a) All documents reviewed by the Victims Compensation Board for purposes of approving an application for compensation shall be confidential and shall not be disclosed without the consent of the victim except as provided in this section and subsection 7043(c) of this title.

(b) For the purpose of requesting restitution, the amount of assistance provided by the Victims Compensation Board shall be established by copies of bills submitted to the Victims Compensation Board reflecting the amount paid by the Board and stating that the services for which payment was made were for uninsured pecuniary losses.

(c) The following shall be confidential and shall be redacted by the Victims Compensation Board for any purpose including restitution: the victim's residential address, telephone number, and other contact information and the victim's Social Security number. In cases involving stalking, sexual offenses, and domestic violence, the following information shall

also be confidential and shall not be disclosed by the Victims Compensation Board for any purpose, including restitution, absent a court order:

(1) the victim's employer's name, telephone number, address, or any other contact information; and

(2) the victim's medical or mental health provider's name, telephone number, address, or any other contact information. (Added 2011, No. 145 (Adj. Sess.), § 6, eff. May 15, 2012.)

Subchapter 2: Center For Crime Victim Services

§ 5359. Victims Compensation Special Fund

(a) There is created a fund to be known as the Victims Compensation Fund. This Fund shall be administered by the Victims Compensation Board established by section 5352 of this title. The purpose of this Fund shall be to support the activities and the operating costs of the Victims Compensation Board and the Center for Crime Victim Services.

(b) The Victims Compensation Fund shall consist of:

(1) Fees imposed by the court clerk and designated for deposit into the Fund pursuant to section 7282 of this title.

(2) Restitution as ordered by the court pursuant to section 7043 of this title.

(3) Funds received from inmate labor contribution from the prison industries enhancement program or from any other source.

(4) Appropriations by the General Assembly.

(c) Balances in the Fund at the end of the fiscal year shall be carried forward and remain in the Fund. (Added 2003, No. 57, § 13a, eff. June 4, 2003; amended 2015, No. 97 (Adj. Sess.), § 78.)

§ 5360. Domestic and Sexual Violence Special Fund

A Domestic and Sexual Violence Special Fund is established, to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5 and administered by the Center for Crime Victim Services created in section 5361 of this title. The revenues of the Fund shall consist of that portion of the additional surcharge on penalties and fines imposed by section 7282 of this title deposited in the Domestic and Sexual Violence Special Fund and that portion of the town clerks' fee for issuing and recording civil marriage or civil union licenses in 32 V.S.A. § 1712(1) deposited in the Domestic and Sexual Violence Special Fund. The Fund may be expended by the Center for Crime Victim Services for budgeted grants to the Vermont Network against Domestic and Sexual Violence and for the Criminal Justice Training Council position dedicated to domestic violence training, pursuant to 20 V.S.A. § 2365(c). (Added 2011, No. 162 (Adj. Sess.), § E.220.1; amended 2015, No. 97 (Adj. Sess.), § 79.)

§ 5361. Center for Crime Victim Services

(a) The Center for Crime Victim Services is created and shall be responsible for the following:

(1) strengthen and coordinate programs serving crime victims;

(2) promote the rights and needs of crime victims statewide;

(3) [Repealed.]

(4) assist in the development and administration of other programs and services for crime victims and witnesses, as needed;

(5) administer the federal Victims of Crime Act funds (VOCA); and

(6) serve as a clearinghouse for information regarding victims of crime.

(b) The Center shall be governed by and attached to the Victims Compensation Board for administrative support.

(c) The Board may employ such staff as necessary to carry out its responsibilities under this chapter and chapter 165 of

this title. (Added 1991, No. 263 (Adj. Sess.), § 1; amended 1993, No. 88 § 2; 2003, No. 57, § 2, eff. July 1, 2004; 2015, No. 97 (Adj. Sess.), § 80.)

§ 5362. Restitution Unit

(a) A Restitution Unit is created within the Center for Crime Victim Services for purposes of ensuring that crime victims receive restitution when it is ordered by the court.

(b) The Restitution Unit shall administer the Restitution Fund established under section 5363 of this title.

(c) The Restitution Unit shall have the authority to:

(1) Collect restitution from the offender when it is ordered by the court under section 7043 of this title.

(2) Enforce a restitution obligation as a civil judgment under section 7043 of this title. The Restitution Unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.

(3)(A) Share and access information, including information maintained by the National Criminal Information Center, consistent with Vermont and federal law, from the court, the Departments of Corrections, of Motor Vehicles, of Taxes, and of Labor, and law enforcement agencies in order to carry out its collection and enforcement functions. The Restitution Unit, for purposes of establishing and enforcing restitution payment obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center.

(B) Provide information to the Department of Corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the Restitution Unit's collection efforts.

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the court, provided that the Social Security number is maintained on a separate form that is confidential and exempt from public inspection and copying under the Public Records Act.

(4) Investigate and verify losses as determined by the Restitution Unit, including losses that may be eligible for advance payment from the Restitution Special Fund, and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the Crime Victims' Restitution Special Fund accordingly. The Restitution Unit, when appropriate, shall submit to the Court a proposed revised restitution order, with copies provided to the victim and the offender. No hearing shall be required.

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6)(A) Report offenders' payment histories to credit reporting agencies. The Unit shall not make a report under this subdivision (6) until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(B) Obtain offenders' credit reports from credit reporting agencies. The Unit shall not obtain a report under this subdivision (6) until after it has notified the offender by first class mail or other means likely to give actual notice of its intent to obtain the report.

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimus in restitution cases, and contract with one or more law enforcement agencies or other investigators for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender. (Added 2003, No. 57, § 3, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 1; 2005, No. 51, § 2; amended 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2005, No. 162 (Adj. Sess.), § 4, eff. Jan. 1, 2007; 2007, No. 40, § 3; 2011, No.

145 (Adj. Sess.), § 3; 2013, No. 126 (Adj. Sess.), § 1.)

§ 5363. Crime Victims' Restitution Special Fund

(a) There is hereby established in the State Treasury a fund to be known as the Crime Victims' Restitution Special Fund, to be administered by the Restitution Unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the Fund:

- (A) all monies collected by the Restitution Unit pursuant to section 7043 and subdivision 5362(c)(7) of this title;
- (B) all fees imposed by the clerk of court and designated for deposit into the Fund pursuant to section 7282 of this title;
- (C) all monies donated to the Restitution Unit or the Crime Victims' Restitution Special Fund; and
- (D) such sums as may be appropriated to the Fund by the General Assembly.

(2) If a person donates funds, or if a restitution recipient has declined to accept payment of restitution, the donated or declined amounts shall be retained in the Crime Victims' Restitution Special Fund.

(3) If a victim who is entitled to receive an advance payment of restitution from the Crime Victims Restitution Special Fund cannot be located, the Restitution Unit shall report the amount to the Treasurer within the time limits provided by 27 V.S.A. § 1247(d), and the Treasurer shall report it as unclaimed property. Notwithstanding any other provision of law, in no event shall the advance payments from the Restitution Special Fund to which the victim is entitled be subject to ultimate deposit in the General or Education Fund.

(c) The Restitution Unit shall make disbursements from the Restitution Special Fund only to pay restitution obligations arising under section 7043 of this title, to support the Restitution Unit, or pursuant to subsection (d) of this section.

(d)(1) The Restitution Unit is authorized to advance up to \$5,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

- (A) was first ordered by the court to receive restitution on or after July 1, 2004;
- (B) is a natural person or the natural person's legal representative;
- (C) has not been reimbursed under subdivision (2) of this subsection; and
- (D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to \$5,000.00 under this subsection to the following persons or entities:

- (A) a victim service agency approved by the Restitution Unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection;
- (B) a victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

- (A) fails to provide the Restitution Unit with the documentation necessary to support the victim's claim for restitution;
- (B) violated a criminal law of this State that caused or contributed to the victim's material loss; or
- (C) has crime-related losses that are eligible for payment from the Victims Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for:

(A) jewelry or precious metals; or

(B) luxury items or collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

(e) If the Restitution Unit collects in excess of \$10,000.00 from an offender, the amount in excess of \$10,000.00 shall first be paid to that offender's victims until the victims have received the full amount of restitution ordered. Any excess remaining after the victims have received the full amount of restitution ordered shall be divided between the Victims Compensation Fund and the Crime Victims Special Restitution Fund in proportion to the amount which each paid.

(f)(1) In no event shall the amount of restitution advanced to the victims of a single crime spree during a single fiscal year under this title exceed five percent of the balance of the Fund at the end of the prior fiscal year. If this section applies, an advance payment to a victim shall be reduced by the same percentage that the Restitution Unit reduces the total amount advanced to all victims in connection with the crime spree. Unless otherwise ordered by the court, the Restitution Unit shall determine the offenders and crimes encompassed within a crime spree.

(2) A victim whose advance payment is reduced pursuant to this subsection shall be entitled to receive additional advance payments during subsequent fiscal years until the restitution order has been satisfied or the \$10,000.00 cap has been reached, whichever occurs first.

(g) All balances in the Fund at the end of any fiscal year shall be carried forward and remain a part of the Fund. Disbursements from the Fund shall be made by the State Treasurer on warrants drawn by the Commissioner of Finance and Management.

(h) Notwithstanding anything in this section or any other provision of law to the contrary, revenue from the surcharge fees deposited into the Crime Victims' Restitution Special Fund shall be used to support the Restitution Unit and restitution for crime victims, and as otherwise authorized by the General Assembly. (Added 2003, No. 57, § 4, eff. June 4, 2003; amended 2003, No. 92 (Adj. Sess.), § 2; 2005, No. 51, § 3; 2007, No. 40, § 4, eff. July 1, 2012; 2011, No. 3, § 84, eff. Feb. 17, 2011; 2011, No. 55, § 13; 2011, No. 145 (Adj. Sess.), § 4; 2013, No. 126 (Adj. Sess.), § 2.)

§ 5364. Subrogation lien

The State shall be subrogated to the rights of the victim, assignee, heir, or dependent to whom restitution payments are made to the extent of the payments made. The State shall have a lien therefor and may commence an action or intervene in any action to protect and enforce such lien. Such subrogation rights shall be against any person liable for the pecuniary loss. (Added 2005, No. 51, § 4.)

§ 5365. Access to financial records

(a) As used in this section:

(1) "Depositor" means an owner of an account in a financial institution and includes "share account holders" of credit unions.

(2) "Financial institution" means a savings and loan association, a trust company, a savings bank, an industrial bank, a banking organization, a commercial bank, or a credit union organized under the laws of this State or authorized to do business in this State.

(3) "Offender" means a person who owes restitution.

(4) "Restitution" means an unsatisfied obligation to pay restitution that was ordered in connection with a criminal case and about which, prior to the issuance of the order, the offender had notice and an opportunity to contest the amount owed.

(5) "Restitution unit" means the State of Vermont restitution unit.

(b) Upon receipt of a duly authorized written request from the restitution unit to identify depository accounts held by an offender, a financial institution shall search its depositor records in order to identify accounts in which the offender has an ownership or beneficial interest.

(c) A financial institution shall notify the restitution unit of all accounts identified in response to a request filed under

subsection (b) of this section. The notification shall contain the following information, if available to the financial institution through its search procedure, for each account identified:

- (1) The full name, date of birth, and address that the offender provided for himself or herself to the financial institution.
- (2) The offender's Social Security number.
- (3) The offender's account number.
- (4) The amount of deposits contained in the offender's account.
- (5) Whether the offender is the sole owner of the account.

(d) The financial institution shall not provide notice in any form to a depositor identified by the restitution unit pursuant to this section. Failure to provide notice to a depositor shall not constitute a violation of the financial institution's duty of good faith to its customers.

(e) A financial institution may charge the restitution unit a fee for services provided under this section, provided that the fee shall not exceed the actual costs incurred by the financial institution.

(f) The information provided to each other by the financial institution and the restitution unit pursuant to this section shall be confidential and shall be used only for the purpose of collecting unpaid restitution. (Added 2007, No. 40, § 5.)

§ 5366. Delay in debt collection by health care provider

(a) When a person files a claim under this chapter, no health care provider that has been given notice of the claim shall conduct any debt collection activities relating to medical or dental treatment received by the person in connection with the claim until an award is made on the claim or until the claim is determined to be noncompensable pursuant to section 5355 of this title. The period during which the health care provider is prohibited from conducting debt collection activities under this section shall be excluded in determining the applicable limitations period for commencing an action to collect the debt.

(b) As used in this section:

(1) "Debt collection activities" means repeatedly calling or writing to the claimant and threatening to turn the matter over to a debt collection agency or to an attorney for collection, enforcement, or filing of other process. The term shall not include routine billing or inquiries about the status of the claim.

(2) "Health care provider" shall have the same meaning as in 18 V.S.A. § 9402. (Added 2007, No. 173 (Adj. Sess.), § 3.)

Subchapter 3: Sex Offender Registration; Law Enforcement Notification

§ 5401. Definitions

As used in this subchapter:

(1) "Address" means the actual location of the sex offender's dwelling, including the street address, if any.

(2) "Department" means the Department of Public Safety.

(3) "Local law enforcement agency" means the municipal police department or statutorily established college or university police department. If the municipality, college, or university has no police department, the law enforcement agency that serves the municipality, college, or university.

(4) "Mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes the person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(5) "Minor" means a person under the age of 18 years.

(6) "Personality disorder" means a condition where a person exhibits personality traits that are inflexible and maladaptive and cause either significant functional impairment or subjective distress.

(7) "Predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(8) "Release" means release from confinement or custody or placement into the community for any reason, including release on bail pending appeal, probation, parole, furlough, work release, early release, alternative sanctions, house arrest, daily interrupt, community placement, or completion of sentence. It shall also mean probation or parole supervision of an out-of-state sex offender under an interstate agreement or compact.

(9) "Registry" means the Sex Offender Registry maintained by the Department of Public Safety.

(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 section 3252 of this title;
- (ii) aggravated sexual assault as defined in section 3253 of this title;
- (iii) lewd and lascivious conduct as defined in section 2601 of this title;
- (iv) sexual abuse of a vulnerable adult as defined in section 1379 of this title;
- (v) second or subsequent conviction for voyeurism as defined in subsection 2605(b) or (c) of this title;
- (vi) kidnapping with intent to commit sexual assault as defined in subdivision 2405(a)(1)(D) of this title;
- (vii) aggravated sexual assault of a child in violation of section 3253a of this title;
- (viii) human trafficking in violation of subdivisions 2652(a)(1)-(4) of this title;
- (ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title;
- (x) 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;
 - (XVI) trafficking in persons as defined in 18 U.S.C. sections 2251-2252(a), 2260, or 2421-2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse; and
- (xi) 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 that 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 subdivision 2405(a)(1)(D) of this title;
- (iii) lewd and lascivious conduct with a child as defined in section 2602 of this title;
- (iv) slave traffic as defined in section 2635 of this title;
- (v) sexual exploitation of children as defined in chapter 64 of this title;
- (vi) procurement or solicitation as defined in subdivision 2632(a)(6) of this title;
- (vii) aggravated sexual assault of a child as defined in section 3253a of this title;
- (viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2652 of this title;
- (ix) sexual exploitation of a minor as defined in section 3258 of this title;
- (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 (A) or (B) of this 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 that 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.

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

(11) "Sexually violent offense" means sexual assault or aggravated sexual assault, as described in sections 3252 and 3253 of this title, or a comparable offense in another jurisdiction of the United States, or any attempt to commit sexual assault, aggravated sexual assault, or a comparable offense in another jurisdiction of the United States.

(12) "Sexually violent predator" means a person who is a sex offender, who has been convicted of a sexually violent offense, as defined in subdivision (11) of this section, and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(13) "Employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of governmental or educational benefit.

(14) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution in Vermont, including any secondary school, trade or professional institution, or institution of higher learning.

(15)(A) "Conviction" means a judgment of guilt following a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere, an Alford Plea, or a judgment of guilt pursuant to a deferred sentence.

(B) A sex offender whose sentence is deferred shall have no duty to register unless:

- (i) the offender violates the terms of the deferred sentence agreement and is sentenced on the conviction, in which case the offender's name shall remain on the Registry for the period of time required by subsection 5407(e) or (f) of this title; or
- (ii) the court finds that the interests of justice warrant placing the offender's name on the Registry while the

sentence is deferred, in which case the offender's name shall be removed from the Registry upon his or her successful completion of the deferred sentence agreement.

(C) A sex offender treated as a youthful offender pursuant to 33 V.S.A. chapter 52A shall have no duty to register unless the offender's youthful offender status is revoked and he or she is sentenced for the offense in the Criminal Division of Superior Court.

(16) "Risk" means the degree of dangerousness that a sex offender poses to others. "High-risk" means a high degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual reoffense. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 1997, No. 57, § 7, eff. June 26, 1997; 2001, No. 49, § 2, eff. Sept. 1, 2001; 2003, No. 157 (Adj. Sess.), § 2; 2005, No. 79, § 5; 2005, No. 83, § 3; 2005, No. 192 (Adj. Sess.), § 24, eff. May 26, 2006; 2009, No. 1, § 13b, eff. March 4, 2009; 2009, No. 58, § 6; 2011, No. 31, § 1, eff. May 17, 2011; 2011, No. 55, § 9; 2015, No. 31, § 1; 2017, No. 15, § 1, eff. May 1, 2017; 2017, No. 72, § 1.)

§ 5402. Sex Offender Registry

(a) The Department of Public Safety shall establish and maintain a Sex Offender Registry, that 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;

(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 15 V.S.A. § 811.

(c) The Departments of Corrections and of Public Safety shall adopt rules, forms and procedures under 3 V.S.A. chapter 25 to implement the provisions of this subchapter. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 1999, No. 152 (Adj. Sess.), § 78a, eff. May 29, 2000; 2001, No. 49, § 3, eff. Sept. 1, 2001; 2009, No. 58, § 13.)

§ 5403. Reporting to Department of Public Safety

(a) Upon conviction and prior to sentencing, the court shall order the sex offender to provide the court with the following information, which the court shall forward to the Department forthwith:

(1) name;

(2) date of birth;

(3) current address;

(4) Social Security number;

(5) current employment; and

(6) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student.

(b) Within 14 days after sentencing, the court shall forward to the Department:

(1) the sex offender's conviction record, including offense, date of conviction, sentence, and any conditions of release or probation; and

(2) an order issued pursuant to section 5405a of this title, on a form developed by the Court Administrator, that the defendant comply with Sex Offender Registry requirements.

(c) The Departments of Corrections and of Public Safety shall jointly develop a process for the Department of

Corrections to notify the Department of Public Safety when an offender who is under Department of Corrections supervision is required to be placed on the Sex Offender Registry because of a conviction that occurred in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court. The report shall include the offense of which the defendant was convicted that requires the placement of his or her name on the Registry. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2003, No. 157 (Adj. Sess.), § 3; 2015, No. 31, § 2; 2017, No. 11, § 26.)

§ 5404. Reporting upon release from confinement or supervision

(a) Upon receiving a sex offender from the court on a probationary sentence or supervised community sentence and prior to releasing a sex offender from a correctional facility to serve probation, parole, furlough, or a supervised community sentence, the Department of Corrections shall forward to the Department the following information concerning the sex offender:

- (1) an update of the information listed in subsection 5403(a) of this title;
- (2) the address upon release and whether the offender will be living with a child under 18 years of age;
- (3) the name, address, and telephone number of the probation and parole office in charge of monitoring the sex offender; and
- (4) documentation of any treatment or counseling received.

(b) As part of planning for the release of a sex offender from a correctional facility to the community upon completion of the offender's maximum sentence, the Department of Corrections shall notify the offender of his or her obligation to report to the Department to register as a sex offender in compliance with section 5407 of this chapter prior to the offender's scheduled release date. The Department of Corrections shall assist the offender with registration as a sex offender and advise the offender that failure to register with the Department prior to release is a crime subject to section 5409 of this chapter.

(c) The Department of Corrections shall notify the Department of Public Safety within 24 hours of the time a sex offender changes his or her address or place of employment, or enrolls in or separates from any postsecondary educational institution, or begins residing with a child under 18 years of age. In addition, the Department of Corrections shall provide the Department with any updated information requested by the Department.

(d) With respect to a sex offender residing with a child under 18 years of age under circumstances enumerated in subsection (a) or (c) of this section, the Department of Corrections shall communicate with the Department for Children and Families. If placement in a home with a child is being considered by the Department of Corrections, the Department of Corrections shall notify the Department for Children and Families, and the departments shall work together to determine whether such a placement is appropriate. If the Department of Corrections does not have a role in the placement of the offender in the community, but knows the offender will be residing with a person under 18 years of age, the Department of Corrections shall notify the Department for Children and Families at least 24 hours prior to releasing the offender from confinement.

(e) The information required to be provided by subsection (a) of this section shall also be provided by the Department of Corrections to a sex offender's parole or probation officer within three days of the time a sex offender is placed on probation or parole by the court or the Parole Board.

(f) If it has not been previously submitted, upon receipt of the information to be provided to the Department pursuant to subsection (a) of this section, the Department shall immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2001, No. 49, § 4, eff. Sept. 1, 2001; 2003, No. 157 (Adj. Sess.), § 4; 2009, No. 1, § 14; 2015, No. 1, § 1, eff. Feb. 25, 2015.)

§ 5405. Court determination of sexually violent predators

(a) The General Assembly finds that some sexual offenders should be subject to increased sex offender registry and community notification procedures. It is the intent of the General Assembly that State's Attorneys utilize the provisions in this section to petition the court to designate those offenders who pose a greater risk to the public as sexually violent predators to ensure that those offenders will be required to register as sex offenders for life, and that they will be among those offenders who are included on the State's Internet Sex Offender Registry.

(b) Within 15 days after the conviction of a sex offender, the State may file a petition with the court requesting that the person be designated as a sexually violent predator.

(c) The determination of whether a person is a sexually violent predator shall be made by the court at the time of sentencing.

(d) The court shall order a presentence investigation that shall include a psychosexual evaluation of the offender.

(e) In making a determination of whether the person is a sexually violent predator, the court shall examine the following:

(1) the person's criminal history;

(2) any testimony presented at trial, including expert testimony as to the person's mental state;

(3) the person's history of treatment for a personality disorder or mental abnormality connected with his or her criminal sexual behavior;

(4) any mitigating evidence, including treatment history, evidence of modified behavior, or expert testimony, that the convicted sex offender wishes to provide to the court prior to the determination; and

(5) any other relevant evidence.

(f) The standard of proof when the court makes such a determination shall be clear and convincing evidence that the convicted sex offender suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(g) The court shall determine whether the offender was eligible to be charged as a habitual offender as provided in section 11 of this title or a violent career criminal as provided in section 11a of this title and shall make findings as to such.

(h) After making its determinations, the court shall issue a written decision explaining the reasons for its determinations and provide a copy of the decision to the Department within 14 days.

(i) A person who is determined to be a sexually violent predator shall be subject to sex offender lifetime registration and community notification and inclusion on the Internet Sex Offender Registry as provided in this subchapter. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2001, No. 49, § 5, eff. Sept. 1, 2001; 2005, No. 79, § 8; 2017, No. 11, § 27.)

§ 5405a. Court determination of Sex Offender Registry requirements

(a)(1) The court shall determine at sentencing whether Sex Offender Registry requirements apply to the defendant.

(2) If the State and the defendant do not agree as to the applicability of Sex Offender Registry requirements to the defendant, the State shall file a motion setting forth the Sex Offender Registry requirements applicable to the defendant within 14 days of the entry of a guilty plea. To the extent the defendant opposes the motion, the State and the defendant shall present evidence at the sentencing as to the applicability of Sex Offender Registry requirements to the defendant.

(b) The court shall consider the following when determining under this section whether Sex Offender Registry requirements apply to the defendant:

(1) the report issued pursuant to subsection 5403(c) of this title;

(2) the presentence investigation report regarding the offense for which the defendant is being sentenced;

(3) the court's own judgment of conviction and any evidence that was presented at trial; and

(4) any other evidence admitted at sentencing and deemed relevant by the court to the defendant's Registry status.

(c) The State shall bear the burden of proving by a preponderance of the evidence the applicability of Sex Offender Registry requirements to the defendant under this section.

(d) Within 14 days after the sentencing or the presentation of evidence pursuant to subdivision (a)(2) of this section, the court shall issue an order determining whether Sex Offender Registry requirements apply to the defendant. The order shall include:

(1) the offense of which the defendant was convicted that requires the placement of his or her name on the Sex Offender Registry;

(2) any prior convictions that affect:

(A) the defendant's Sex Offender Registry Status;

(B) the length of time that the defendant is required to register as a sex offender; or

(C) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title;

(3) the length of time that the defendant is required to register as a sex offender;

(4) whether the defendant is designated as a sexually violent predator under section 5405 of this title;

(5) whether the defendant was immediately released or remanded to the custody of the Department of Corrections; and

(6) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title. (Added 2015, No. 31, § 3; amended 2017, No. 11, § 28.)

§ 5406. Department of Corrections duty to provide notice

Upon receiving a sex offender from the court on a probationary sentence or any alternative sentence under community supervision by the Department of Corrections, or upon the release of a sex offender from a correctional facility, the Department of Corrections shall do each of the following:

(1) inform the sex offender of the duty to register and keep the registration current as provided in section 5407 of this title;

(2) inform the sex offender that if the sex offender changes residence to another state, the sex offender shall notify the Department of the new address and shall also register with the designated law enforcement agency in the new state not later than three days after establishing residence in the new state, if the new state has a registration requirement;

(3) require the sex offender to read and sign a form stating that the duty of the sex offender to register under this section has been explained and is understood. The registration form shall be sent to the Department without delay; and

(4) inform the sex offender that if he or she crosses into another state for purposes of employment, carrying on a vocation, or being a student, the sex offender must notify the Department of the new address, and shall register with the designated law enforcement agency in the other state, if the other state has a registration requirement. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2001, No. 49, § 6, eff. Sept. 1, 2001.)

§ 5407. Sex offender's responsibility to report

(a) Except as provided in section 5411d of this title, a sex offender shall report to the Department as follows:

(1) if convicted of a registry offense in another state, within 10 days after either establishing residence in this State or crossing into this State for purposes of employment, carrying on a vocation, or being a student, the sex offender shall provide the information listed in subsection 5403(a) of this title;

(2) annually within 10 days after the registrant's birthday, or if a person is determined to be a sexually violent predator, that person shall report to the Department every 90 days;

(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title, that person shall report to the Department within 36 hours, and shall report whether a child under the age of 18 resides at such address;

(4) within three days after the registrant enrolls in or separates from any postsecondary educational institution;

(5) within three days after any change in place of employment;

(6) within three days of any name change;

(7) within three days of a child under 18 years of age moving into the residence of the registrant;

(8) within 24 hours of being released from probation, parole, furlough, or a supervised community sentence; and

(9) prior to the offender's scheduled release date from a correctional facility to the community and if the offender is

not subject to probation, furlough, or a community sentence upon release that requires supervision by the Department of Corrections.

(b) If a sex offender changes residence to another state, or crosses into another state for purposes of employment, carrying on a vocation, or being a student, the sex offender shall notify the Department of the new address and shall also register with the designated law enforcement agency in the new state not later than three days after establishing residence in the new state, if the new state has a registration requirement.

(c) Upon a sex offender's change of residence to another state, the Department shall immediately notify the designated law enforcement agency in the new state, if the new state has a registration requirement.

(d) The report required by this section shall include the information required by sections 5403 and 5404 of this chapter.

(e) Except as provided for in subsection (f) of this section, a person required to register as a sex offender under this subchapter shall continue to comply with this section, except during periods of incarceration, until 10 years have elapsed since the person was released from prison or discharged from parole, supervised release, or probation, whichever is later. The 10-year period shall not be affected or reduced in any way by the actual duration of the offender's sentence as imposed by the court, nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release.

(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:

(1) has at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter or a comparable offense in another jurisdiction of the United States;

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title, or a comparable offense in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years of age or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction;

(3) has been determined to be a sexually violent predator pursuant to section 5405 of this title; or

(4) has been designated as a noncompliant high-risk sex offender pursuant to section 5411d of this title.

(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.

(h) A registrant who has no permanent address shall report to the Department to notify it as to his or her temporary residence. Temporary residence, for purposes of this section, need not include an actual dwelling or numbered street address, but shall identify a specific location. A registrant shall not be required to check in daily if he or she makes acceptable other arrangements with the Department to keep his or her information current. The Department may enter into an agreement with a local law enforcement agency to perform this function, but shall maintain responsibility for compliance with this subsection.

(i) If the Department is notified by an offender that he or she is living with a child under the age of 18, the Department shall notify the Department for Children and Families within three days. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2001, No. 49, § 7, eff. Sept. 1, 2001; 2003, No. 157 (Adj. Sess.), § 5; 2005, No. 192 (Adj. Sess.), § 25, eff. May 26, 2006; 2007, No. 77, § 7, eff. June 7, 2007; 2009, No. 1, § 15; 2009, No. 58, § 7; 2015, No. 1, § 2, eff. Feb. 25, 2015; 2015, No. 31, § 4.)

§ 5408. Record of addresses; arrest warrant

The Department shall maintain a record of the addresses of all sex offenders. The record shall be updated at least every three months. At any time, if the Department is unable to verify the whereabouts and address of a sex offender subject to

this subchapter, it shall immediately notify the local law enforcement agency in writing that the sex offender's whereabouts are unknown. The Department shall also send a copy of the notification to the State's Attorney of the county in which the sex offender's most recent address is located. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2005, No. 192 (Adj. Sess.), § 21, eff. May 26, 2006.)

§ 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 that 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. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2001, No. 49, § 8, eff. Sept. 1, 2001; 2005, No. 192 (Adj. Sess.), § 22, eff. May 26, 2006; 2009, No. 58, § 8.)

§ 5410. Victim notification

If requested by a victim, the Department shall promptly notify the victim of the initial registration of a sex offender and any time the sex offender changes address, where such disclosure is necessary to protect the victim or the public concerning a person required to register under this subchapter. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996.)

§ 5411. Notification to local law enforcement and local community

(a) Upon receiving a sex offender's registration materials from the Department of Corrections, notification that a nonresident sex offender has crossed into Vermont for the purpose of employment, carrying on a vocation, or being a student, or a sex offender's release or change of address, including changes of address that involve taking up residence in this State, the Department shall immediately notify the local law enforcement agency of the following information, which may be used only for lawful law enforcement activities:

(1) name;

(2) general physical description;

(3) nature of offense;

(4) sentence;

(5) the fact that the Registry has on file additional information, including the sex offender's photograph and fingerprints;

(6) current employment;

(7) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student; and

(8) whether the offender complied with treatment recommended by the Department of Corrections.

(b)(1) Except as provided for in subsections (c) and (e) of this section, the Department, the Department of Corrections, and any authorized local law enforcement agency shall release Registry information concerning persons required to

register under State law if the requestor can articulate a concern about the behavior of a specific person regarding the requestor's personal safety or the safety of another, or the requestor has reason to believe that a specific person may be a registered sex offender and can articulate a concern regarding the requestor's personal safety or the safety of another. However, the identity of a victim of an offense shall not be released.

(2) The Department, the Department of Corrections, and any authorized local law enforcement agency shall release the following Registry information if the requestor meets the requirements in subdivision (1) of this subsection:

- (A) a general physical description of the offender;
- (B) date of birth;
- (C) the date and nature of the offense;
- (D) whether the offender complied with treatment recommended by the Department of Corrections; and
- (E) whether there is an outstanding warrant for the offender's arrest.

(c)(1) Except as provided for in subsection (e) of this section, upon request of a member of the public about a specific person, the Department, the Department of Corrections, and any authorized local law enforcement agency shall release Registry information on sex offenders whose information is required to be posted on the Internet in accordance with section 5411a of this title.

(2) The Department, the Department of Corrections, and any authorized local law enforcement agency shall release the following Registry information to a requestor in accordance with subdivision (1) of this subsection:

- (A) the offender's known aliases;
- (B) the offender's date of birth;
- (C) a general physical description of the offender;
- (D) the offender's town of residence;
- (E) the date and nature of the offender's conviction;
- (F) 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 offender;
- (G) whether the offender complied with treatment recommended by the Department of Corrections;
- (H) whether there is an outstanding warrant for the offender's arrest; and
- (I) the reason for which the offender information is accessible under subdivision (1) of this subsection.

(3)(A) The Department, the Department of Corrections, and any authorized local law enforcement agency may, at the discretion of an authorized law enforcement officer, release the current address of an offender listed in subdivision (1) of this subsection if the requestor can articulate a concern regarding the requestor's personal safety or the safety of another, and the requirements of subsection (d) of this section have been satisfied.

(B) For purposes of this subdivision, "authorized law enforcement officer" means a sheriff, a chief of police, the Commissioner of Public Safety, the State's Attorney of Essex County, or a designee. The designee shall be a certified law enforcement officer whose authority is granted or given by the sheriff, chief of police, Commissioner of Public Safety, or State's Attorney of Essex County, either through explicit order or Department policy.

(d) The Department, the Department of Corrections, and any local law enforcement agency authorized to release Registry information shall keep a log of requests for registry information and follow the procedure for verification of the requestor's identity recommended by the Department. Such log shall include the requestor's name, address, telephone number, the name of the person for whom the request was made, the reason for the request, and the date of the request. Information about requestors shall be confidential and shall only be accessible to criminal justice agencies.

(e) After 10 years have elapsed from the completion of the sentence, a person required to register as a sex offender for life pursuant to section 5407 of this title who is not designated as a noncompliant high-risk sex offender pursuant to section 5411d of this title may petition the Criminal Division of the Superior Court for a termination of community notification, including the Internet. The State shall make a reasonable attempt to notify the victim of the proceeding, and consider victim

testimony regarding the petition. If the registrant was convicted of a crime that requires lifetime registration, there shall be a rebuttable presumption that the person is a high-risk sex offender. Should the registrant present evidence that he or she is not a high-risk offender, the State shall have the burden of proof to establish by a preponderance of the evidence that the person remains a high risk to reoffend. The court shall consider whether the offender has successfully completed sex offender treatment. The court may require the offender to submit to a psychosexual evaluation. If the court finds that there is a high risk of reoffense, notification shall continue. The Vermont Rules of Civil Procedure shall apply to these proceedings. A lifetime registrant may petition the court to be removed from community notification requirements once every 60 months. The presumption under this section that a lifetime registrant is a high-risk offender shall not automatically subject the offender to increased public access to his or her status as a sex offender and related information under subdivision (c)(1) of this section or section 5411a of this title.

(f) Registry information shall not be released under this section unless it is released pursuant to written protocols governing the manner and circumstances of the release developed by the Department, the Department of Corrections, or an authorized law enforcement agency. The protocols shall include consultation between the department or agency releasing the information and the Department of Corrections' staff member responsible for supervising the offender. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 1999, No. 152 (Adj. Sess.), § 78b, eff. May 29, 2000; 2001, No. 49, § 9, eff. Sept. 1, 2001; 2003, No. 157 (Adj. Sess.), § 6; 2005, No. 192 (Adj. Sess.), §§ 23, 26, 31, eff. May 26, 2006; 2007, No. 77, § 8, eff. June 7, 2007; 2009, No. 154, § 238.)

[Section 5411a effective July 1, 2015; see also contingent amendment to section 5411a and proviso.]

§ 5411a. Electronic posting of the Sex Offender Registry

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the Department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon the offender's release from confinement or, if the offender was not subject to confinement, upon the offender's sentencing:

- (1) Sex offenders who have been convicted of:
 - (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(c));
 - (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) human trafficking as defined in subdivisions 2652(a)(1)-(4) of this title;
 - (M) aggravated human trafficking as defined in subdivision 2653(a)(4) of this title;
 - (N) 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;
- (xvi) trafficking in persons as defined in 18 U.S.C. sections 2251-2252(a), 2260, or 2421-2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse;
- (O) an attempt to commit any offense listed in this subdivision (a)(1).

(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 that 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 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 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;
- (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 of Corrections 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 shall annually report to the Department or a local law enforcement agency for the purpose of being photographed for the Internet.

(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 18 years of age, 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.

(l) A sex offender's street address shall not be posted electronically if the offender has a developmental disability, receives funding from the Department of Disabilities, Aging, and Independent Living (DAIL) for 24-hour supervision and treatment, and resides in a residence that is equipped with alarms. However, this information shall be otherwise available pursuant to this section. An agency designated pursuant to 18 V.S.A. § 8907 to provide mental health and developmental disability services (DA), or a specialized service agency (SSA) operating under an agreement entered into pursuant to 18 V.S.A. § 8912 that is providing supervision for the offender shall immediately notify the administrator of the Sex Offender Registry and local law enforcement if the individual's level of supervision is decreased from 24 hours or if the offender leaves his or her residence without authorization, and thereafter this subsection shall cease to apply to that offender. If after notice and hearing, the Commissioner of DAIL finds that the DA or SSA has failed to notify the administrator of the Sex Offender Registry and local law enforcement of a decrease from 24-hour supervision or absence without authorization by the offender within 24 hours of the change in status, the Commissioner may impose an administrative penalty of not more than \$1,000.00 for each day of the violation. A DA or SSA shall have the right to a de novo appeal of a decision under this subsection pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(m) Information regarding a sex offender whose sentence is deferred shall not be posted electronically unless the offender violates the terms of the deferred sentence agreement and is sentenced on the conviction. (Added 2003, No. 157 (Adj. Sess.), § 7, eff. Oct. 1, 2004; amended 2005, No. 83, § 13; 2005, No. 192 (Adj. Sess.), § 29, eff. May 26, 2006; 2007, No. 77, § 9, eff. June 7, 2007; 2009, No. 58, §§ 9, 14; 2009, No. 66 (Adj. Sess.), §§ 2, 3; 2009, No. 157 (Adj. Sess.), § 3; 2011, No. 31, § 2, eff. May 17, 2011; 2011, No. 55, § 10; 2013, No. 181 (Adj. Sess.), § 2, eff. June 10, 2014; 2015, No. 133 (Adj. Sess.), § 4, eff. May 25, 2016; 2017, No. 15, § 2, eff. May 1, 2017.)

[Contingent amendment to section 5411a; see also section 5411a set out above and proviso .]

§ 5411a. Electronic posting of the Sex Offender Registry

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the Department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon the offender's release from confinement or, if the offender was not subject to confinement, upon the offender's sentencing:

(1) Sex offenders who have been convicted of:

- (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(c));
 - (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) human trafficking as defined in subdivisions 2652(a)(1)-(4) of this title;
 - (M) aggravated human trafficking as defined in subdivision 2653(a)(4) of this title;
 - (N) 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;
 - (xvi) trafficking in persons as defined in 18 U.S.C. sections 2251-2252(a), 2260, or 2421-2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse;
 - (O) an attempt to commit any offense listed in this subdivision (a)(1).
- (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 that 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 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 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 offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the Department determines that all the information to be electronically posted about the offender is correct; and

(B)(i) the offender has been designated as high-risk by the Department of Corrections pursuant to section 5411b of this title;

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

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

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

(v) 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;

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

(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;

(9) whether the offender complied with treatment recommended by the Department of Corrections;

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

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

(12) whether the offender has been designated high risk by the Department of Corrections pursuant to section 5411b of this title; and

(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.

(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 shall annually report to the Department or a local law enforcement agency for the purpose of being photographed for the Internet.

(d) 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 18 years of age, 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.

(l) A sex offender's street address shall not be posted electronically if the offender has a developmental disability, receives funding from the Department of Disabilities, Aging, and Independent Living (DAIL) for 24-hour supervision and treatment, and resides in a residence that is equipped with alarms. However, this information shall be otherwise available pursuant to this section. An agency designated pursuant to 18 V.S.A. § 8907 to provide mental health and developmental disability services (DA), or a specialized service agency (SSA) operating under an agreement entered into pursuant to 18 V.S.A. § 8912 that is providing supervision for the offender shall immediately notify the administrator of the Sex Offender Registry and local law enforcement if the individual's level of supervision is decreased from 24 hours or if the offender leaves his or her residence without authorization, and thereafter this subsection shall cease to apply to that offender. If after

notice and hearing, the Commissioner of DAIL finds that the DA or SSA has failed to notify the administrator of the Sex Offender Registry and local law enforcement of a decrease from 24-hour supervision or absence without authorization by the offender within 24 hours of the change in status, the Commissioner may impose an administrative penalty of not more than \$1,000.00 for each day of the violation. A DA or SSA shall have the right to a de novo appeal of a decision under this subsection pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(m) Information regarding a sex offender whose sentence is deferred shall not be posted electronically unless the offender violates the terms of the deferred sentence agreement and is sentenced on the conviction. (Added 2003, No. 157 (Adj. Sess.), § 7, eff. Oct. 1, 2004; amended 2005, No. 83, § 13; 2005, No. 192 (Adj. Sess.), § 29, eff. May 26, 2006; 2007, No. 77, § 9, eff. June 7, 2007; 2009, No. 58, §§ 9, 14; 2009, No. 66 (Adj. Sess.), §§ 2, 3; 2009, No. 157 (Adj. Sess.), § 3; 2011, No. 31, § 2, eff. May 17, 2011; 2011, No. 55, § 10; 2013, No. 181 (Adj. Sess.), § 2, eff. June 10, 2014; 2015, No. 31, § 8; 2015, No. 133 (Adj. Sess.), § 4, eff. May 25, 2016; 2017, No. 15, § 2, eff. May 1, 2017.)

§ 5411b. Designation of high-risk sex offender

(a) The Department of Corrections 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 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 June 28, 2005 who are high risk and shall designate them as such no later than September 1, 2009. (Added 2003, No. 157 (Adj. Sess.), § 8, eff. March 1, 2005; amended 2005, No. 83, § 16; 2009, No. 58, § 10.)

§ 5411c. Active community notification by the Department of Public Safety, the Department of Corrections, and local law enforcement

(a) Notwithstanding other provisions to the contrary, the Department, the Department of Corrections, and any authorized local law enforcement agency are authorized to notify members of the public at their discretion about any sex offender whose information is required to be posted on the Internet in accordance with section 5411a of this title.

(b) The Department, the Department of Corrections, and any authorized local law enforcement agency are authorized to notify members of the public at their discretion about a sex offender whose information is not required to be posted on the Internet in accordance with section 5411a of this title only under circumstances that constitute a compelling risk to public safety and only after consultation with the Vermont Crime Information Center and the Department of Corrections.

(c) Registry information shall not be released under this section unless it is released pursuant to written protocols governing the manner and circumstances of the release developed by the Department, the Department of Corrections, or an authorized law enforcement agency. The protocols shall include consultation between the department or agency releasing the information and the department of corrections' staff member responsible for supervising the offender.

(d) Active community notification regarding registered sex offenders who may pose a danger to members of the community is an important public safety tool that the General Assembly intends for authorized agencies to use at their discretion in accordance with this subchapter. (Added 2005, No. 192 (Adj. Sess.), § 27, eff. May 26, 2006.)

§ 5411d. Designation of noncompliant high-risk sex offender

(a) Prior to releasing a person from total confinement, the Department of Corrections shall designate the person as a noncompliant high-risk sex offender if the person meets all of the following criteria:

(1) is incarcerated on or after June 7, 2007 for lewd and lascivious conduct with a child as defined in section 2602 of this title, sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or any attempt to commit a crime listed herein, or a comparable offense in another jurisdiction of the United States;

(2) is not subject to indeterminate life sentences under section 3271 of this title;

(3) is designated as a high risk sex offender pursuant to section 5411b of this title; and

(4) is noncompliant with sex offender treatment as defined by Department of Corrections' directives.

(b) Noncompliant high-risk sex offenders shall report to the Department as follows:

(1) In person, within 15 days from the date of release from Department of Corrections' supervision, and within every 30 days thereafter.

(2) Prior to any change of address. However, if the change of address is unanticipated, the offender shall report within one day of the change of address.

(3) Prior to enrollment in or separation from any postsecondary educational institution. However, if the change in school status is unanticipated, the offender shall report within one day of the change.

(4) Within one day of any change in a place of employment.

(c) In addition to the Registry information required in section 5403 of this title, a noncompliant high-risk sex offender shall provide the Department with the make, model, color, registration, and license plate number of any vehicle the person operates prior to operation. An offender found in operation of a vehicle not on the list provided to the Department shall be considered to be in violation of this subsection.

(d) The Department shall arrange for the noncompliant high-risk sex offender to have his or her digital photograph updated annually for purposes of the electronic Registry as provided in section 5411a of this title. An offender who is requested by the Department to report to the Department or a local law enforcement agency for the purpose of being photographed for the Internet Registry shall comply with the request within 30 days.

(e) The Department shall conduct periodic unannounced Registry compliance checks on noncompliant high-risk sex offenders to verify the accuracy of Registry information. The Department may enter into an agreement with a local law enforcement agency to perform duties under this subsection and under subdivision (b)(1) of this section, but shall maintain responsibility for compliance with this subsection.

(f)(1) A noncompliant high-risk sex offender may petition the Criminal Division of the Superior Court to be relieved from the heightened Registry requirements in this section once every five years from the date of designation. The offender shall have the burden of proving by a preponderance of the evidence that he or she:

(A) no longer qualifies as a high-risk offender as defined in section 5401 of this title and rules adopted by the Department of Corrections in accordance with section 5411b of this title; and

(B) has complied with and completed sex offender treatment as provided by Department of Corrections' directives.

(2) The Vermont Rules of Civil Procedure shall apply to these proceedings.

(3) If the court finds that the offender is not high risk and has successfully completed treatment, the court shall order that the offender is no longer considered a noncompliant high risk offender and is subsequently relieved from the heightened registry requirements of this section; however, the offender shall still continue to comply with Sex Offender Registry and other requirements as provided elsewhere in this subchapter.

(g)(1) A noncompliant high-risk sex offender who knowingly fails to comply with any of the Registry requirements under this section shall be imprisoned for not less than five years and a maximum term of life and, in addition, may be fined not more than \$50,000.00. A sentence may be suspended in whole or in part, or the person may be eligible for parole or release on conditional reentry or furlough, provided the person is subject to intensive supervision by the Department of Corrections.

(2) In a criminal proceeding for violating any of the Registry requirements under this section, a defendant shall be prohibited from challenging his or her status as a noncompliant high-risk sex offender.

(h) A noncompliant high-risk sex offender convicted of violating this section shall be sentenced under section 3271 of this title. (Added 2007, No. 77, § 10, eff. June 7, 2007; amended 2009, No. 154, § 238.)

§ 5412. Immunity

The Department, the Department of Corrections, any authorized local law enforcement agency, and their employees

shall be immune from liability in carrying out the provisions under this subchapter except in instances of gross negligence or willful misconduct, provided that the agencies complied with the rules adopted pursuant to this subchapter. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996; amended 2003, No. 157 (Adj. Sess.), § 9; 2005, No. 83, § 14; 2005, No. 192 (Adj. Sess.), § 28, eff. May 26, 2006.)

§ 5413. Expungement of records

A person whose conviction of a sex offense is reversed and dismissed shall not be required to register for that conviction under the provisions of this subchapter and any information about that conviction contained in the Registry shall be removed and destroyed. If any information about that conviction was provided to any person or agency under subsection 5402(b) of this subchapter, that person or agency shall be notified that the conviction was reversed and shall be required to remove and destroy the information. If the person whose conviction is reversed and dismissed has more than one entry in the Registry, only the entry related to the dismissed case shall be removed and destroyed. (Added 1995, No. 124 (Adj. Sess.), § 1, eff. Sept. 1, 1996.)

§ 5414. Participation in national sex offender registration

The Department shall participate in the National Sex Offender Registry Program managed by the Federal Bureau of Investigation in accordance with guidelines issued by the U.S. Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines. (Added 2001, No. 49, § 11, eff. Sept. 1, 2001.)

§ 5415. Enforcement; special investigation units

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's Registry requirements and are authorized to conduct in-person Registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) The department of public safety shall report to the Senate and House Committees on Judiciary on or before December 15, 2009, and annually thereafter, regarding its efforts under this section. (Added 2009, No. 1, § 16, eff. March 4, 2009.)

§ 5416. Persons subject to erroneous Sex Offender Registry requirements; petition to correct

(a) A person may petition the court for an order declaring that the person has been inadvertently subject to erroneous Sex Offender Registry requirements and directing the Department of Public Safety to correct the error. The petitioner shall provide notice of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter.

(b) A petition filed under this section shall include:

(1) the court's order issued under subdivision 5403(b)(2) of this title to comply with Sex Offender Registry requirements, if available; and

(2) the factual basis for the petitioner's allegation that he or she was subject to an erroneous Sex Offender Registry requirement.

(c) The court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that he or she was by court order subject to an erroneous Sex Offender Registry requirement. As used in this subsection, "erroneous Sex Offender Registry requirement" includes the person's name being erroneously placed on the Sex Offender Registry or the Internet Sex Offender Registry, or the person being erroneously subject to lifetime registration under subsection 5407(f) of this title.

(d) If a petition filed under this section is granted, the court shall enter an order declaring that the person had been inadvertently subject to erroneous Sex Offender Registry requirements. The court shall provide the order to the Department of Public Safety and direct the Department to take any action necessary to correct the error, including, if appropriate, removing the person's name from the Sex Offender Registry and the Internet Sex Offender Registry.

(e)(1) If the court denies a petition filed under this section, no further petition shall be filed by the person with respect to the alleged error.

(2) This subsection shall not apply if the petition is based on:

- (A) newly discovered evidence;
- (B) an expungement order issued under chapter 230 of this title;
- (C) a successful petition under chapter 182 of this title (innocence protection); or
- (D) a successful petition for postconviction relief. (Added 2015, No. 31, § 5.)

Subchapter 4: Profits From Crime

§ 5421. Notice of profits from a crime

(a) Every person, firm, corporation, partnership, association, or other legal entity that knowingly contracts for, pays, or agrees to pay any profits from a crime, as defined in subdivision 5351(8) of this title, to a person charged with or convicted of that crime shall give written notice to the Attorney General of the payment or obligation to pay as soon as is practicable after discovering that the payment is or will be a profit from a crime.

(b) The Attorney General, upon receipt of notice of a contract, agreement to pay, or payment of profits of the crime shall send written notice of the existence of such profits to all known victims of the crime at their last known addresses. (Added 2009, No. 55, § 2, eff. June 1, 2009.)

§ 5422. Actions to recover profits from a crime

(a) Notwithstanding any other provision of law, including any statute of limitations, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of that crime, or the legal representative of that convicted person, within three years of the discovery of any profits from the crime. Any damages awarded in such action shall be recoverable only up to the value of the profits of the crime. This section shall not limit the right of a victim to proceed or recover under another cause of action.

(b) The Attorney General may, within three years of the discovery of any profits from the crime, bring a civil action on behalf of the State to enforce the subrogation rights described in section 5357 of this title.

(c) If the full value of any profits from the crime has not yet been claimed by either the victim of the crime or the victim's representative, the Attorney General, or both, within three years of the discovery of such profits, then the State may bring a civil action in a court of competent jurisdiction to recover the costs incurred by providing the defendant with counsel, if any, and other costs reasonably incurred or to be incurred in the incarceration of the defendant.

(d) Upon the filing of an action pursuant to subsection (a) of this section, the victim shall deliver a copy of the summons and complaint to the Attorney General. Upon receipt of a copy of the summons and complaint, the Attorney General shall send written notice of the alleged existence of profits from the crime to all other known victims at their last known addresses.

(e) To avoid the wasting of assets identified in the complaint as newly discovered profits of the crime, the Attorney General, acting on behalf of the plaintiff and all other victims, shall have the right to apply for all remedies that are also otherwise available to the victim. (Added 2009, No. 55, § 2, eff. June 1, 2009.)

Subchapter 5: Sexual Assault Nurse Examiners

§ 5431. Definition; certification

(a) As used in this subchapter, "SANE" means a sexual assault nurse examiner.

(b) A person licensed under 26 V.S.A. chapter 28 (nursing) may obtain a specialized certification from the SANE Program as a sexual assault nurse examiner if he or she demonstrates compliance with the requirements for specialized certification as established by the SANE Board. (Added 2015, No. 38, § 12, eff. May 28, 2015; amended 2017, No. 68, § 1.)

§ 5432. SANE Board

(a) The SANE Board is created for the purpose of advising the Sexual Assault Nurse Examiners Program.

(b) The SANE Board shall be composed of the following members:

- (1) the Executive Director of the Vermont State Nurses Association or designee;

- (2) the President of the Vermont Association of Hospitals and Health Systems;
 - (3) the Director of the Vermont Forensic Laboratory or designee;
 - (4) the Director of the Vermont Network Against Domestic and Sexual Violence or designee;
 - (5) an attorney with experience prosecuting sexual assault crimes, appointed by the Attorney General;
 - (6) the Executive Director of the Vermont Center for Crime Victim Services or designee;
 - (7) a law enforcement officer assigned to one of Vermont's special units of investigation, appointed by the Commissioner of Public Safety;
 - (8) a law enforcement officer employed by a municipal police department, appointed by the Executive Director of the Vermont Criminal Justice Training Council;
 - (9) three sexual assault nurse examiners, appointed by the Attorney General;
 - (10) a health care provider as defined in 18 V.S.A. § 9402 whose practice includes the care of victims of sexual assault, appointed by the Commissioner of Health;
 - (11) a pediatrician whose practice includes the care of victims of sexual assault, appointed by the Vermont Chapter of the American Academy of Pediatrics;
 - (12) the Coordinator of the Vermont Victim Assistance Program or designee;
 - (13) the President of the Vermont Alliance of Child Advocacy Centers or designee;
 - (14) the Chair of the Vermont State Board of Nursing or designee;
 - (15) the Commissioner for Children and Families or designee; and
 - (16) the Commissioner of Health or designee.
- (c) The SANE Board shall advise the SANE Program on the following:
- (1) statewide program priorities;
 - (2) training and educational requirements;
 - (3) a standardized sexual assault protocol and kit to be used by all physicians and hospitals in this State when providing forensic examinations of victims of alleged sexual offenses; and
 - (4) statewide policy development related to sexual assault nurse examiner programs. (Added 2015, No. 38, § 12, eff. May 28, 2015; amended 2017, No. 68, § 1.)

§ 5433. SANE Program Clinical Coordinator

A clinical coordinator position shall be funded by either the Vermont Center for Crime Victim Services or through other identified State funding options for the purpose of staffing the SANE Program. The position shall be contracted through the Vermont Network Against Domestic and Sexual Violence. The Clinical Coordinator shall consult with the SANE Board in performing the following duties:

- (1) overseeing the recruitment and retention of SANEs in the State of Vermont;
- (2) administering a statewide educational program, including:
 - (A) the initial SANE certification training;
 - (B) ongoing training to ensure currency of practice for SANEs; and
 - (C) advanced training programs as needed;
- (3) providing consultation, technical assistance, and training to SANEs and acute care hospitals regarding the standards of care for sexual assault patients;
- (4) providing training and outreach to criminal justice and community-based agencies as needed;
- (5) coordinating and managing a system for ensuring best practices; and

(6) granting certifications, pursuant to section 5431 of this title, to candidates who demonstrate compliance with the requirements for specialized certification as established by the SANE Board. (Added 2015, No. 38, § 12, eff. May 28, 2015; amended 2017, No. 68, § 1.)

§ 5434. Repealed. 2017, No. 68, § 1.

§ 5435. Access to a sexual assault nurse examiner

(a) On or before September 1, 2017, the Vermont Association of Hospitals and Health Systems (VAHHS) and the Vermont SANE Program shall enter into a memorandum of understanding (MOU) to ensure improved access to sexual assault nurse examiners (SANE) for victims of sexual assault in underserved regions. Improved access may include all acute care hospitals to provide patients with care from a paid employee who is also a certified sexual assault nurse examiner or access to a shared regional staffing pool that includes certified sexual assault nurse examiners.

(b) The Vermont SANE Program shall develop and offer an annual training regarding standards of care and forensic evidence collection to emergency department appropriate health care providers at acute care hospitals in Vermont. Personnel who are certified sexual assault nurse examiners shall not be subject to this subsection.

(c) On or before January 1, 2018, the SANE Program shall report to the General Assembly on training participation rates pursuant to subsection (b) of this section. (Added 2017, No. 68, § 1.)