



## 2017 LEGISLATIVE WRAP UP

Following is a list of laws passed during Vermont's 2017 legislative session that impact victims and survivors of stalking, sexual assault and domestic violence.

- Relevant statutes are noted in *italics*.
- Victim-specific sections are in **bold**.

More information is available about any of these acts or any of the bills that did not become law this session on the legislative website <http://legislature.vermont.gov/>.

PLEASE NOTE: as of June 10, 2017 the Vermont Statutes online had not been updated to reflect these latest changes. Act numbers have not yet been assigned to certain laws (see: ACT ##). You may contact Auburn Watersong at the Network for more information or to be added to the Network's legislative alert email list: [auburn@vtnetwork.org](mailto:auburn@vtnetwork.org) or 802-223-1302 ext. 106.

### **Domestic and Sexual Violence Bill - H.74/ACT 44 (which includes H.25, H.27, H.493)**

*13 V.S.A. § 2601a (new); 13 V.S.A. § 2632 (amended); 13 V.S.A. § 1030 (amended); 13 V.S.A. § 3281 (new); 13 V.S.A. § 4501 (amended); 14 V.S.A. § 315 (amended); 15 V.S.A. § 665 (amended); 15 V.S.A. § 1103 (amended); 15 V.S.A. § 1104 (amended).*

- **Creates a sexual violence misdemeanor** – “open and gross lewdness” based upon current case law (related to former charges called “prohibited acts”); **effective immediately**.
- **Amends violation of abuse prevention order statute** – requires intent to commit the act; effective July 1, 2017.
- **Creates sexual assault survivors’ bill of rights** (originally H. 25) – mirrors federal bill of rights – established various rights regarding services, medical care and notification of rights; effective July 1, 2017.
- **Extends statutes of limitation** (Originally H. 27)
  - **Eliminates the statute of limitations for sexual assault**, effective July 1, 2017.
  - **L&L against a child and sexual exploitation of children changed to 40 years**, effective July 1, 2017.
- **Enhances Rape Survivors Child Custody protections, effective immediately:**
  - A parent shall **not inherit from a child conceived of sexual assault** who is the subject of a parental rights and responsibilities order.
  - Upon issuance of a rights and responsibilities order, the court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the noncustodial parent. An order issued in accordance with this subdivision **shall be permanent and shall not be subject to modification**.
- **Establishes “no contact” option for Emergency Relief From Abuse Orders and Updates “no contact” definition for Final Relief From Abuse Orders, effective immediately:**



- Clarifies that in **both emergency and final Relief From Abuse Order processes, the court may restrict the defendant’s ability to contact the plaintiff**. The previous language in the final relief from abuse order statute has been updated by the passage of this bill to include electronic communications and both statutes now exactly mirror each other in language.

***“A judge may order the defendant: to refrain from contacting the plaintiff or the plaintiff’s children, or both, in any way, whether directly, indirectly, or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication.”***

#### **Sexual Assault Nurse Examiners (SANE) - S.95/ACT ##**

*13 V.S.A. chapter 167, subchapter 5 § 5431 - § 5435 (amended)*

- SANE Certification moved from multidisciplinary SANE Board to SANE Program (which includes the SANE Clinical Coordinator).
- SANE Board – changed from regulatory to advisory. Will advise the Sexual Assault Nurse Examiners Program on:
  - statewide program priorities;
  - training and educational requirements;
  - 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
  - statewide policy development related to sexual assault nurse examiner programs.
- **Ensures continued funding for SANE clinical coordinator** by the Vermont Center for Crime Victim Services or other state sources.
  - Duties added include
    - coordinating and managing a system for ensuring best practices;
    - 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.
- **Improves access to SANE nurses:** 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
- 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
- Establishes a Sexual Assault Evidence Kit Study Committee to conduct a comprehensive examination of issues related to **improving tracking and handling of sexual assault forensic exam kits**.



### **Expungement - H.171/ACT ##**

*13 V.S.A. § 8005 (amended); 13 V.S.A. § 8006 (amended); 13 V.S.A. § 7601(4) (amended); 13 V.S.A. § 7602 (amended); 13 V.S.A. § 7605 (amended); 13 V.S.A. § 7606 (amended).*

- Before accepting a plea, the court shall inform the person that the conviction may be eligible for expungement or sealing.
- Prior to completion of a sentence, DOC shall give notice that the conviction may be eligible for expungement or sealing.
- For persons receiving a penalty involving a fine only, the court shall, at the time of the judgment, provide either oral or written notice that the conviction may be eligible for expungement or sealing.
- **Adds an exclusion of fraud or deceit related to pharmaceuticals: this is a concern for incarcerated victims – of whom many are convicted on this charge.**
- Reduces the amount of time needed to wait for expungement or sealing in a number of situations.
- Removes the requirement that community justice centers approve the expungement for those under 25 years old.

### **Consent by minors for mental health treatment - H.230/ACT 35**

*18 V.S.A. chapter 196 (amended).*

A minor may give consent to receive any legally authorized outpatient treatment from a mental health professional. **The consent of a parent or legal guardian shall not be necessary to authorize outpatient treatment** - psychotherapy and other counseling services that are supportive – but does not include prescription drugs. **This is especially relevant to LGBTQA youth.**

### **Racial Disparities in the Criminal and Juvenile Justice System - Advisory Panel - H.308/ACT ##**

*3 V.S.A. § 168 (new); 20 V.S.A. § 2358 (amended); 20 V.S.A. § 2366(f) (new); 20 V.S.A. § 2366 (amended).*

- Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel.
- Minimum training standards – includes anti-bias training approved by the Vermont Criminal Justice Training Council.
- The Attorney General, together with the Human Rights Commission and interested stakeholders, shall develop a strategy to address racial disparities within the State systems of education, labor and employment, access to housing and health care, and economic development.
- Fair and impartial policing strategies and data collection.
- **This is especially relevant to victims of color and victims who are immigrants and refugees in Vermont.**

**Bail – An Act related to the criminal justice system - H.503/ACT ##**

*13 V.S.A. § 7551 (amended); 28 V.S.A. § 301 (amended); 18 V.S.A. § 4233a (new); 18 V.S.A. § 4234 (amended); 13 V.S.A. § 1404 (amended); 18 V.S.A. § 4234b (amended); 23 V.S.A. § 1202 (amended); 13 V.S.A. chapter 8 (amended); 13 V.S.A. § 7554b (amended).*

- No bond for misdemeanors.
- Bail hearings – **take into account protections to the public.**
- Probationers – may issue a citation in lieu of arrest
- At arraignment of violation of probation, if the court finds that bail or conditions of release will reasonably ensure the probationer’s appearance at future proceedings **and conditions of release will reasonably protect the public**, the court shall release a probationer who is on probation for a nonviolent misdemeanor or nonviolent felony.
- Pretrial communications recommendations to help ensure appearance by defendant
- Home detention – the court, DOC, or the defendant may request home detention at arraignment or after a hearing – shall be credit for time served.
- **Electronic monitoring**
  - To be developed and overseen by DOC
  - Must be fully functional in the geographic area
  - Eligible – offenders in DOC custody and other target populations (home confinement furlough, past minimal sentence, and reintegration furlough)

**Adverse Childhood Experiences Bill - Building resilience for individuals - H.508/ACT 43**

*33 V.S.A. chapter 34 (new)*

- Creates an Adverse Childhood Experiences Working Group to investigate, catalogue, and analyze existing resources to **mitigate childhood trauma**, identify populations served, and examine structures to build resiliency.
  - 3 members of the House and 3 members of the Senate
  - Shall take testimony from a diverse array of public and private stakeholders, including the Agency of Human Service’s Child and Family Trauma Advisory Committee.
  - Submit recommended legislation
- The Agency of Human Services shall submit a plan that specially addresses the integration of **evidence-informed and family-focused prevention, intervention, treatment, and recovery services for individuals affected by adverse childhood experiences.**
- Recommends that the State Colleges and University of Vermont’s College of Medicine, College of Nursing and Health Sciences, and College of Education and Social Services expressly include information in their curricula pertaining to adverse childhood experiences and their impact on short- and long-term physical and mental health outcomes.

### Deferred sentences and the sex offender registry - S.7/ACT 15

*13 V.S.A. § 5401 (amended); 13 V.S.A. § 5411a (amended).*

- A sex offender whose sentence is deferred has no duty to register, unless the offender **violates the terms of the deferred sentence agreement and is sentenced on the conviction or the court finds that the interests of justice warrant placing the offender's name on the Registry while the sentence is deferred.**
- 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.

### Data Brokers Bill -Requiring telemarketers to provide accurate caller identification information S.72/ ACT ##

*9 V.S.A. chapter 63, subchapter 1 § 2464a through § 2464c (amended).*

- On or before December 15, 2017, the Commissioner of Financial Regulation and the Attorney General, in consultation with industry and consumer stakeholders, shall submit a recommendation or draft legislation to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.
  - Recommendation to include clear **definition of “data broker”, whether and how industry should be regulated, consumer protections,** proposed courses of action re: benefits v. harm. **The Network will be represented on this committee to ensure an eye toward victim confidentiality and safety.**

### News media privilege - S.96/ACT 40

*12 V.S.A. § 1616 (new).*

- **No court or legislative, administrative, or other body with the power to issue a subpoena shall compel a journalist to disclose news or information obtained or received in confidence;** including identity of the source of news or information that is not published or disseminated.
- If the information was not obtained or received in confidence, it cannot be compelled to be disclosed, **unless it is highly material or relevant, cannot be obtained by other means, and there is a compelling need for disclosure.**



### Spousal Support and Maintenance (aka “Alimony”) Task Force - S.112/ACT ##

15 V.S.A. § 752 (amended).

- **Task force to review and make legislative recommendations** to Vermont’s laws concerning spousal support and maintenance.
- Sets forth **financial guidelines** for the court.

### Court diversion and pretrial services: Relevant for any victim or offender facing charges in conjunction with mental health and/or substance abuse issues; also relevant re: offender lethality assessment (see below) - S.134/ACT ##

3 V.S.A. § 164 (amended); 13 V.S.A. § 7554c (amended).

- Revises Court Diversion statutes
- The prosecuting attorney may refer a person to diversion either before or after arraignment
- If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A), the prosecutor shall provide the person with the opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice.
- Pretrial risk assessments and needs screenings
  - **The assessment shall not assess victim safety or risk of lethality in domestic assaults**
  - A person who is arrested, lodged, and unable to post bail within 24 hours of lodging shall be offered a risk assessment and, if deemed appropriate by the pretrial services coordinator, a needs screening prior to arraignment.
    - A person charged with an offense for which registration as a sex offender is required pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by a term of life imprisonment shall not be eligible under this section
  - A person’s refusal to participate shall not result in any criminal legal liability to the person
  - At arraignment, the court may order a person to participate in a needs screening with a pretrial services coordinator
  - The court may order a person to engage in pretrial services; however, failure to comply with a court order authorized by subdivision (1) or (2) of this subsection shall not constitute a violation of court orders.
  - The information a pretrial services coordinator may report is limited to whether a risk assessment indicates risk of nonappearance, whether further substance use assessment or treatment is indicated, whether mental health assessment or treatment is indicated, whether a person participated in a clinical assessment, and



whether further engagement with pretrial services is recommended, unless the person provides written permission to release additional information.

- Information related to the present offense directly or indirectly derived from the risk assessment, needs screening, or other conversation with the pretrial services coordinator shall not be used against the person in the person's criminal or juvenile case for any purpose, including impeachment or cross examination. However, the fact of participation or nonparticipation in risk assessment or needs screening may be used in subsequent proceedings.
  
- All records of information obtained during risk assessment or needs screening shall be stored in a manner making them accessible only to the Director of Pretrial Services and Pretrial Service Coordinators for a period of three years, after which the records shall be maintained as required by State law. The Director of Pretrial Services shall be responsible for the destruction of records when ordered by the court.
  
- It is the intent of the General Assembly to encourage persons cited or arrested for a misdemeanor drug possession charge the opportunity to engage with pretrial services, and, if appropriate, enter treatment, and that, in turn, a person who complies with such conditions be eligible for dismissal of the charge.