

1 H.660

2 Introduced by Representatives Martin of Wolcott and Wright of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Public safety; civil commitment of sexually violent predators

6 Statement of purpose of bill as introduced: This bill proposes to establish a  
7 procedure which permits the civil commitment of sexually violent predators  
8 after their release from prison. The procedure applies only to persons who are  
9 incarcerated on July 1, 2014, and who are not subject to indeterminate life  
10 sentences under 13 V.S.A. § 3271.

11 An act relating to the civil commitment of sexually violent predators

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

13 Sec. 1. 18 V.S.A. chapter 201 is redesignated and §§ 8601–8617 are added to  
14 it to read:

15 CHAPTER 201. ~~MENTALLY ILL CRIMINALS~~ INVOLUNTARY

16 COMMITMENT OF SEXUALLY VIOLENT PREDATORS

17 § 8601. LEGISLATIVE FINDINGS AND INTENT

18 (a) The General Assembly finds that there exists a small but extremely

19 dangerous group of sexually violent predators who have a behavioral

20 impairment or personality disorder and who are likely to engage in repeated

1 acts of violence if not treated for their behavioral impairment or personality  
2 disorder. Because the existing involuntary commitment procedures under  
3 Vermont law are inadequate to address the special needs of sexually violent  
4 predators and the risks they present to society, the General Assembly  
5 determines that a separate involuntary civil commitment process for the  
6 potentially long-term control, care, and treatment of sexually violent predators  
7 is necessary. The General Assembly also finds that because of the nature of  
8 the mental abnormalities or personality disorders from which sexually violent  
9 predators suffer and the dangers they present, it is necessary to house  
10 involuntarily committed sexually violent predators in an environment separate  
11 from persons otherwise involuntarily committed under Vermont law.

12 (b) It is the intent of the General Assembly that the involuntary  
13 commitment proceedings in this chapter be used infrequently and only in cases  
14 in which the State believes that an offender's mental condition makes the  
15 person a real and substantial threat to the community. Involuntary  
16 commitment should not be a substitute for proper investigation, prosecution,  
17 sentencing, incarceration, and in-prison treatment for sexually violent  
18 offenders. Involuntary commitment is not intended to be punitive, but rather  
19 an effort to provide for the public's safety. Although treatment is offered to  
20 sexually violent predators, the primary purpose of this bill is to provide for the  
21 public's safety. The General Assembly hopes, however, that such treatment

1 will prove successful for sexually violent offenders, and that they will  
2 eventually be able to return to the community without reoffending.

3 § 8602. DEFINITIONS

4 As used in this chapter:

5 (1) “Agency with jurisdiction” means an agency that releases upon  
6 lawful order or authority a person serving a sentence or term of confinement  
7 and includes the Department of Corrections, the Department of Health, and the  
8 Vermont Parole Board.

9 (2) “Attorney General” means the Attorney General of the State of  
10 Vermont or his or her designee.

11 (3) “Behavioral impairment” means a condition, either congenital or  
12 acquired, that affects the emotional or volitional capacity of a person to a  
13 degree that makes it difficult or impossible for the person to control his or her  
14 violent behavior and in a manner that predisposes the person to the  
15 commission of sexually violent offenses.

16 (4) “Commissioner” means the Commissioner of Health or his or her  
17 designee.

18 (5) “Likely to engage in repeated acts of violence” means the person’s  
19 propensity to commit sexually violent offenses is of such a degree as to pose a  
20 menace to the health and safety of others.

1           (6) “Person” means an individual who is a potential or actual subject of  
2 proceedings under this chapter. A person shall not be subject to proceedings  
3 under this chapter unless the person is incarcerated on July 1, 2014, and is not  
4 subject to an indeterminate life sentence under 13 V.S.A. § 3271.

5           (7) “Personality disorder” means a condition in which a person exhibits  
6 personality traits that are inflexible and maladaptive and cause either  
7 significant functional impairment or subjective distress that affects the  
8 emotional or volitional capacity of a person to a degree that makes it difficult  
9 or impossible for the person to control his or her violent behavior and in a  
10 manner that predisposes the person to the commission of sexually violent  
11 offenses.

12           (8) “Sexually motivated” means that one of the purposes for which the  
13 defendant committed the crime was for the purpose of the defendant’s sexual  
14 gratification.

15           (9) “Sexually violent offense” means aggravated sexual assault as  
16 defined in 13 V.S.A. § 3253, sexual assault as defined in 13 V.S.A. § 3252, or  
17 lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, an  
18 attempt to commit one of these offenses, or a comparable offense in another  
19 jurisdiction of the United States.

20           (10) “Sexually violent predator” means a person who has been  
21 convicted of or charged with a sexually violent offense and who suffers from a

1 behavioral impairment or personality disorder which makes the person likely  
2 to engage in repeated acts of violence.

3 (11) “Transitional release” means any halfway house, work release, or  
4 other placement designed to assist the person’s adjustment and reintegration  
5 into the community once released from commitment.

6 (12) “Treatment staff” means the persons, agencies, or firms employed  
7 by or contracted with the Commissioner to provide treatment, supervision, or  
8 other services at the sexually violent predator facility.

9 § 8603. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR

10 (a) When it appears that a person may meet the criteria of a sexually violent  
11 predator as defined in this chapter, the agency with jurisdiction shall give  
12 written notice to the Attorney General and the multidisciplinary team  
13 established in this section 90 days prior to:

14 (1) the anticipated release from total confinement of a person who has  
15 been convicted of a sexually violent offense, except that in the case of a person  
16 who is returned to prison for no more than 90 days as a result of revocation of  
17 post-release supervision, written notice shall be given as soon as practicable  
18 following the person’s readmission to prison;

19 (2) the release of a person who has been charged with a sexually violent  
20 offense and who has been determined to be incompetent to stand trial pursuant  
21 to 13 V.S.A. § 4817; or

1           (3) the release of a person who has been found not guilty of a sexually  
2 violent offense by reason of insanity pursuant to 13 V.S.A. § 4819.

3           (b) The Commissioner of Corrections shall establish a multidisciplinary  
4 team for the purpose of assessing whether a person meets the criteria for a  
5 sexually violent predator. The team may include individuals from other State  
6 agencies, but shall include at least one law enforcement officer and one State's  
7 Attorney or deputy State's Attorney. The team shall review the available  
8 records of a person referred to the team pursuant to subsection (a) of this  
9 section within 30 days of receiving notice and expeditiously notify the  
10 Attorney General of its assessment.

11           (c) The agency with jurisdiction shall inform the Attorney General and the  
12 multidisciplinary team of the following:

13           (1) the person's name, identifying factors, anticipated future residence,  
14 and offense history; and

15           (2) documentation of institutional adjustment and any treatment  
16 received.

17           (d) The Attorney General shall appoint a committee to review the records  
18 of each person referred to the Attorney General pursuant to subsection (a) of  
19 this section. The Attorney General's review committee shall assist the  
20 Attorney General in the determination of whether the person meets the  
21 definition of a sexually violent predator. The assessment of the

1 multidisciplinary team shall be made available to the Attorney General and the  
2 review committee.

3 (e) The agency with jurisdiction, its employees, officials, members of the  
4 multidisciplinary team, members of the Attorney General's review committee,  
5 and individuals contracting, appointed, or volunteering to perform services  
6 under this chapter shall be immune from liability for any good-faith conduct  
7 under this section.

8 § 8604. PETITION

9 (a) When the Attorney General's review committee determines that a  
10 person meets the definition of a sexually violent predator, the Attorney General  
11 may file a petition in the Criminal Division of the Superior Court in the county  
12 where the person was convicted of or charged with a sexually violent offense,  
13 alleging that the person is a sexually violent predator and stating sufficient  
14 facts to support the allegation.

15 (b) The Criminal Division shall have jurisdiction over actions involving the  
16 involuntary commitment of sexually violent offenders under this chapter,  
17 unless otherwise noted.

18 § 8605. PROBABLE CAUSE HEARING

19 (a) Upon filing of a petition under section 8604 of this title, the Court shall  
20 determine whether probable cause exists to believe that the person named in  
21 the petition is a sexually violent predator. If such a determination is made, the

1 Court shall direct that the person be placed into the custody of the  
2 Commissioner upon release of the person from the Commissioner of  
3 Corrections.

4 (b) Within 72 hours after a person is taken into custody pursuant to  
5 subsection (a) of this section, the person shall be provided with notice and an  
6 opportunity to appear in person at a hearing to contest the Court's  
7 determination that probable cause exists to believe the detained person is a  
8 sexually violent predator. At the hearing, the Court shall:

9 (1) verify the detained person's identity; and

10 (2) determine whether probable cause exists to believe that the person is  
11 a sexually violent predator.

12 (c) The detained person shall have the following rights:

13 (1) to be represented by counsel;

14 (2) to present evidence on his or her behalf;

15 (3) to cross-examine witnesses who testify against the person;

16 (4) to view and copy all petitions and reports in the Court file; and

17 (5) to view and copy evidence that the Attorney General intends to  
18 submit to the Court prior to its submission.

19 (d) The Attorney General may rely upon the petition or supplement the  
20 petition with additional evidence or testimony. The Attorney General may  
21 view and copy all petitions and reports in the Court file, cross-examine



1 witnesses, and view and copy evidence that the detained person intends to  
2 submit to the Court prior to its submission.

3 (e) If the probable cause determination is made following the hearing, the  
4 Court shall direct that the person be transferred to an appropriate secure facility  
5 for an evaluation as to whether the person is a sexually violent predator. The  
6 evaluation shall be conducted by an individual deemed to be professionally  
7 qualified to conduct such an examination.

8 § 8606. TRIAL

9 (a) Within 60 days after the completion of a probable cause hearing held  
10 pursuant to section 8605 of this title, the Court shall conduct a trial to  
11 determine whether the person is a sexually violent predator. The trial may be  
12 continued upon the request of either party and a showing of good cause, or by  
13 the Court on its own motion in the interest of justice or upon agreement of the  
14 parties. That the person will not be substantially prejudiced must serve, in  
15 whole or in in part, as the basis of good cause or interest of justice.

16 (b) At all stages of proceedings under this chapter, a person subject to this  
17 chapter shall be entitled to the assistance of counsel, and if the person is  
18 indigent, the Court shall appoint counsel to assist the person. Whenever any  
19 person is subjected to an examination under this chapter, the person may retain  
20 experts or professional individuals to perform an examination on the person's  
21 behalf. When the person wishes to be examined by a qualified expert or

1 professional individual of the person's own choice, the examiner shall be  
2 permitted to have reasonable access to the person for the purpose of the  
3 examination, as well as to all relevant medical and psychological records and  
4 reports in the possession of the Attorney General or agency with jurisdiction.  
5 In the case of a person who is indigent, the Court, upon the person's request,  
6 shall determine whether the services are necessary and calculate reasonable  
7 compensation for the services. If the Court determines that the services are  
8 necessary and the expert or professional individual's requested compensation  
9 for the services is reasonable, the Court shall assist the person in obtaining an  
10 expert or professional individual to perform an examination or participate in  
11 the trial on the person's behalf. The Court shall approve payment for the  
12 services upon the filing of a certified claim for compensation supported by a  
13 written statement specifying the time expended, services rendered, expenses  
14 incurred on behalf of the person, and compensation received in the same case  
15 or for the same services from any other source.

16 (c) The person shall have the right to demand that the trial be before a jury.  
17 If no demand is made 45 days from the completion of the probable cause  
18 hearing, the trial shall be before the Court.

19 § 8607. DETERMINATION

20 (a) The Court or jury shall determine whether, beyond a reasonable doubt,  
21 the person is a sexually violent predator. A jury determination that the person

1 is a sexually violent predator shall require a unanimous verdict. If the Court or  
2 jury is not convinced beyond a reasonable doubt that the person is a sexually  
3 violent predator, the Court shall direct the person's release. If the Court or jury  
4 determines that the person is a sexually violent predator, the person shall be  
5 committed to the custody of the Commissioner for control, care, and treatment  
6 until such time as the person's behavioral impairment or personality disorder  
7 has so changed that the person is safe to be at large. Such control, care, and  
8 treatment shall be provided at a facility operated by the Department of Health.  
9 The person shall have the right to appeal the commitment decision to the  
10 Supreme Court.

11 (b) A person committed for control, care, and treatment by the Department  
12 of Health pursuant to this chapter shall at all times be kept in a secure facility  
13 and segregated from any other patient under the supervision of the  
14 Commissioner. As of July 1, 2016, all persons committed pursuant to this  
15 chapter shall be kept in a facility or building separate from any other patient  
16 under the supervision of the Commissioner.

17 (c) The Department of Health is authorized to enter into an interagency  
18 agreement with the Department of Corrections or an agreement with a private  
19 facility or private treatment professionals for the confinement or treatment of  
20 any person committed pursuant to this chapter. Persons who are in the  
21 confinement of the Commissioner of Corrections pursuant to an interagency

1 agreement shall be housed and managed separately from other offenders in the  
2 custody of the Commissioner of Corrections, and except for occasional  
3 instances of supervised incidental contact, shall be segregated from other  
4 offenders.

5 (d) If a person while committed to the custody of the Commissioner  
6 pursuant to this chapter is taken into custody by a law enforcement officer or  
7 the Commissioner of Corrections pursuant to a parole revocation proceeding or  
8 an arrest or conviction for a criminal offense, upon the person's release from  
9 the custody of the officer, the Commissioner of Corrections, or the federal  
10 correctional system, the person shall be returned to the custody of the  
11 Commissioner for further treatment pursuant to this chapter. If more than one  
12 year has passed from the date the person was transferred from the  
13 Commissioner until the date the person is returned to the Commissioner and an  
14 examination took place prior to transfer from the Commissioner, the person's  
15 last examination shall be updated. During a period of time that a person is not  
16 in the actual custody or supervision of the Commissioner, the Commissioner  
17 shall be excused from the provisions of section 8609 of this title with regard to  
18 providing that person an annual examination, annual notice, and annual report  
19 to the Court, except that the Commissioner shall give notice to the Court as  
20 soon as reasonably possible after the taking of the person into custody that the

1 person is no longer in treatment, and shall give notice to the Court when the  
2 person is returned to the custody of the Commissioner for further treatment.

3 (e) Upon a mistrial, the Court shall direct that the person be held at an  
4 appropriate secure facility until another trial is conducted. Any subsequent  
5 trial following a mistrial shall be held within 90 days of the previous trial,  
6 unless such subsequent trial is continued as provided in this section.

7 (f) If the person charged with a sexually violent offense has been found  
8 incompetent to stand trial and is about to be released from State custody, and  
9 such person's commitment is sought pursuant to this chapter, the Court shall  
10 first hear evidence and determine whether the person did commit the act or acts  
11 charged. In addition, the Rules of Evidence applicable in criminal cases shall  
12 apply, and all constitutional rights available to defendants at criminal trials,  
13 other than the right not to be tried while incompetent, shall apply. After  
14 hearing evidence on this issue, the Court shall make specific findings on  
15 whether the person did commit the act or acts charged, the extent to which the  
16 person's incompetence affected the outcome of the hearing, including its effect  
17 on the person's ability to consult with and assist counsel and to testify on such  
18 person's own behalf, and the extent to which the evidence could be  
19 reconstructed without the assistance of the person and the strength of the  
20 prosecution's case. If after the conclusion of the hearing on this issue, the  
21 Court finds beyond a reasonable doubt that the person did commit the act or

1 acts charged, the Court shall enter a final order appealable by the person on  
2 that issue and may proceed to consider whether the person should be  
3 committed pursuant to this section.

4 § 8608. ANNUAL EXAMINATIONS; TRANSITIONAL RELEASE

5 (a) Each person committed under this chapter shall have an examination  
6 once every year. The Commissioner shall provide the committed person with  
7 an annual written notice of the person's right to petition the Court for release  
8 over the Commissioner's objection. The notice shall contain a waiver of  
9 rights. The Commissioner shall also forward the annual report, as well as the  
10 annual notice and waiver form, to the Court that committed the person. The  
11 person may retain or, if the person is indigent and so requests, the Court may  
12 appoint a qualified professional individual to examine such person, and such  
13 expert or professional individual shall have access to all records concerning the  
14 person that are in the possession of the Attorney General or the agency with  
15 jurisdiction. The Court that committed the person shall then conduct an annual  
16 review of the status of the committed person. The committed person shall  
17 have a right to have an attorney represent the person at the hearing and to be  
18 present at the hearing.

19 (b) Nothing contained in this chapter shall prohibit the person from  
20 otherwise petitioning the Court at this hearing for discharge.

1       (c) If the Court at the hearing determines that probable cause exists to  
2       believe that the person's behavioral impairment or personality disorder has so  
3       changed that the person is safe to be placed in transitional release, the Court  
4       shall set a hearing on the issue. At the hearing, the committed person shall be  
5       entitled to be present and entitled to the benefit of all constitutional protections  
6       that were afforded the person at the initial commitment proceeding. The  
7       Attorney General shall represent the State and have the committed person  
8       evaluated by experts chosen by the State. The committed person shall also  
9       have the right to have experts evaluate the person on the person's behalf, and  
10       the Court shall appoint an expert if the person is indigent and requests an  
11       appointment. The burden of proof at the hearing shall be upon the State to  
12       prove beyond a reasonable doubt that the committed person's behavioral  
13       impairment or personality disorder remains such that the person is not safe to  
14       be placed in transitional release and, if transitionally released, is likely to  
15       engage in acts of sexual violence. The person shall the right to have the matter  
16       tried before a jury.

17       (d) If, after the hearing, the Court or jury is convinced beyond a reasonable  
18       doubt that the person is not appropriate for transitional release, the Court shall  
19       order that the person remain in secure commitment. Otherwise, the Court shall  
20       order that the person be placed in transitional release.

1       (e) If the Court or jury determines that the person should be placed in  
2       transitional release, the Commissioner shall transfer the person to the  
3       transitional release program. The Commissioner may contract for services to  
4       be provided in the transitional release program. During any period the person  
5       is in transitional release, the person shall comply with any rules the  
6       Commissioner may establish for the program and every directive of the  
7       program's treatment staff.

8       (f) At any time during which the person is in the transitional release  
9       program and the treatment staff determines that the person has violated any  
10       rule, directive, or condition associated with the transitional release program,  
11       the treatment staff may remove the person from the transitional release  
12       program and return the person to the secure commitment facility, or may  
13       request the Court to issue an emergency ex parte order directing a law  
14       enforcement officer to take the person into custody and return the person to the  
15       secure commitment facility. Any such request may be made verbally or by  
16       telephone, but shall be followed in written or facsimile form delivered to the  
17       Court by not later than 5:00 p.m. of the first day the Court is open for the  
18       transaction of business after the verbal or telephonic request was made. The  
19       order to take the person into custody shall be equivalent to an arrest warrant  
20       under Rule 4 of the Vermont Rules of Criminal Procedure, including for  
21       Vermont Criminal Information Center and National Crime Information Center



1 purposes. However, the person shall not be placed in a correctional facility as  
2 an arrested person, unless the person is also subject to arrest pursuant to an  
3 arrest warrant or a legally recognized exception to the warrant requirement.

4 (g) Upon the person having been returned to the secure commitment  
5 facility from the transitional release program, notice thereof shall be given by  
6 the Commissioner to the Court. The Court shall set the matter for a hearing on  
7 the first business day after receiving notice that the person has been returned to  
8 the secure commitment facility and cause notice thereof to be given to the  
9 Attorney General, the person, and the Commissioner. The Attorney General  
10 shall have the burden of proof to show probable cause that the person violated  
11 conditions of transitional release. The hearing shall be to the Court. At the  
12 conclusion of the hearing, the Court shall issue an order returning the person to  
13 the secure commitment facility or to the transitional release program and may  
14 order such other further conditions with which the person must comply if the  
15 person is returned to the transitional release program.

16 § 8609. PETITION FOR TRANSITIONAL RELEASE; HEARING

17 (a) If the Commissioner determines that the person's behavioral  
18 impairment or personality disorder has so changed that the person is not likely  
19 to engage in repeated acts of sexual violence if placed in transitional release,  
20 the Commissioner shall authorize the person to petition the Court for  
21 transitional release. The petition shall be served upon the Court and the

1 Attorney General. The Court, upon receipt of the petition for transitional  
2 release, shall order a hearing within 30 days. The Attorney General shall  
3 represent the State and shall have the right to have the petitioner examined by  
4 an expert or professional individual of the attorney's choice. The hearing shall  
5 be before the Court. The burden of proof shall be upon the Attorney General  
6 to show beyond a reasonable doubt that the petitioner's behavioral impairment  
7 or personality disorder remains such that the petitioner is not safe to be at large  
8 and that if placed in transitional release is likely to engage in repeated acts of  
9 sexual violence.

10 (b) If, after the hearing, the Court is convinced beyond a reasonable doubt  
11 that the person is not appropriate for transitional release, the Court shall order  
12 that the person remain in secure commitment. Otherwise, the Court shall order  
13 that the person be placed in transitional release.

14 (c) The provisions of subsections 8608(e), (f), and (g) of this title shall  
15 apply to a transitional release pursuant to this section.

16 (d) Nothing in this chapter shall prohibit a person from filing a petition for  
17 transitional release or final discharge pursuant to this chapter. However, if a  
18 person has previously filed a petition for transitional release or final discharge  
19 without the Commissioner's approval, and if the Court determined either upon  
20 review of the petition or following a hearing that the petition was frivolous or  
21 that the petitioner's condition had not so changed that the person was safe to be

1 at large, the Court shall deny the subsequent petition unless the petition  
2 contains facts upon which a court could find the condition of the petitioner had  
3 so changed that a hearing was warranted. Upon receipt of a first or subsequent  
4 petition from committed persons without the Commissioner's approval, the  
5 Court shall endeavor whenever possible to review the petition and determine  
6 whether the petition is based upon frivolous grounds, and if so shall deny the  
7 petition without a hearing.

8 § 8610. FINAL RELEASE HEARING

9 (a) After a minimum of five years has passed in which the person has been  
10 free of violations of conditions of the person's transitional release plan and  
11 program rules, the treatment staff or other professionals directed by the Court  
12 may examine the person to determine if his or her behavioral impairment or  
13 personality disorder has changed so as to warrant the person being considered  
14 for final discharge. The individual preparing the report shall forward the report  
15 to the Court for review. If the Court determines that probable cause exists to  
16 believe that the person's behavioral impairment or personality disorder has so  
17 changed that the person is safe to be entitled to final discharge, the Court shall  
18 set a formal hearing on the issue. The Attorney General shall have the burden  
19 of proof to show beyond a reasonable doubt that the person's behavioral  
20 impairment or personality disorder remains such that the person is not  
21 appropriate for final discharge. The person shall have the same rights as

1 enumerated in section 8606 of this title, except the right to a jury trial.  
2 Subsequent to either a Court review or a hearing, the Court shall issue an  
3 appropriate order with findings of fact. The order of the Court shall be  
4 provided to the Attorney General, the person, and the Commissioner.

5 (b) If, after a hearing, the Court is convinced beyond a reasonable doubt  
6 that the person is not appropriate for final discharge, the Court shall continue  
7 the Commissioner's custody of the person in a secure facility or transitional  
8 release program. Otherwise, the Court shall order the person finally  
9 discharged. In the event the Court does not order final discharge of the person,  
10 the person shall retain the right to annual reviews.

11 (c) The final discharge shall not prevent the person from being prosecuted  
12 for any criminal acts which the person is alleged to have committed or from  
13 being subject in the future to a subsequent commitment under this chapter.

14 § 8611. NOTICE TO VICTIMS OF RELEASE OF SEX OFFENDERS

15 A victim of a person committed under this chapter shall have the right to  
16 request notification by the Commissioner before the person is released from a  
17 secure facility. If such notice is requested, the Commissioner shall as  
18 expeditiously as possible give written notice of the committed person's  
19 placement or release, including the committed person's town and street of  
20 residence, to the victim at the address or telephone number provided to the  
21 Commissioner by the victim. Any address or telephone number so provided

1 shall be kept confidential. Failure to notify shall not be a reason for  
2 postponement of release. Nothing in this section shall create a cause of action  
3 against the State or an employee of the State acting within the scope of the  
4 employee's employment as a result of the failure to notify pursuant to this  
5 action.

6 § 8612. CONFIDENTIAL OR PRIVILEGED INFORMATION AND  
7 RECORDS

8 Relevant information and records which are otherwise confidential or  
9 privileged shall be released to the agency with jurisdiction or the Attorney  
10 General for the purpose of meeting the notice requirement provided in section  
11 8603 of this title and determining whether a person is or continues to be a  
12 sexually violent predator. Relevant information and records which are  
13 otherwise confidential or privileged may also be reviewed by the Oversight  
14 Commission on the Civil Commitment of Sexually Violent Predators, upon  
15 request by the Commission, provided that the request is authorized by section  
16 8616 of this title.

17 § 8613. COURT RECORDS

18 Any psychological reports, drug and alcohol reports, treatment records,  
19 reports of the diagnostic center, medical records, or victim impact statements  
20 which have been submitted to the Court or admitted into evidence under this  
21 chapter shall be part of the record but shall be sealed and opened only on order

1 of the Court, on mutual agreement of the parties, or as provided in this chapter.  
2 Sealed records may be reviewed by the Oversight Commission on the  
3 Involuntary Commitment of Sexually Violent and Violent Predators, upon  
4 request by the Commission, provided that the request is authorized by section  
5 8616 of this title.

6 § 8614. INELIGIBILITY FOR BAIL, BOND, OR HOUSE ARREST

7 Any person for whom a petition pursuant to this chapter has been filed and  
8 is in the secure confinement of the State shall not be eligible for bail, bond,  
9 house arrest, or any other measures releasing the person from the physical  
10 protective custody of the State.

11 § 8615. COSTS

12 The Commissioner shall be responsible for all costs relating to the  
13 evaluation and treatment of persons committed to the Commissioner's custody  
14 under any provision of this chapter.

15 § 8616. CREATION OF THE OVERSIGHT COMMISSION ON THE

16 INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT

17 PREDATORS

18 (a) The Oversight Commission on the Involuntary Commitment of  
19 Sexually Violent and Violent Predators is created. The Commission shall be  
20 composed of the following members:

1           (1) one member appointed by the Speaker of the House who shall not be  
2           a member of the General Assembly but shall be an attorney;

3           (2) one member appointed by the Senate Committee on Committees  
4           who shall not be a member of the General Assembly but shall be an attorney;

5           (3) one member appointed by the Defender General who shall not be a  
6           member of the Office of the Defender General but shall be an attorney;

7           (4) one member appointed by the American Civil Liberties Union  
8           (ACLU) who shall not be a member of the ACLU;

9           (5) two members appointed by the Vermont Supreme Court who shall  
10          be retired judges; and

11          (6) two members appointed by the Governor who shall not be  
12          employees of the Executive Branch of the State of Vermont but one of whom  
13          shall be an attorney.

14          (b) Commission members shall serve for three-year terms. Prior to the  
15          completion of the three-year term, members may resign or be replaced by the  
16          appointing authority for good cause. At the end of a three-year term, the  
17          appointing authority may appoint a new member or reappoint the previous  
18          member.

1     § 8617. AUTHORITY AND PURPOSE OF THE OVERSIGHT

2             COMMISSION ON THE INVOLUNTARY COMMITMENT OF  
3             SEXUALLY VIOLENT PREDATORS

4             (a) The Commission shall review all involuntary commitment cases filed  
5             under chapter 201 of this title in which a judge or jury has reached a final  
6             determination but shall not review a matter or information that relates to an  
7             ongoing investigation, a pending petition, a hearing, a trial, an appeal, or an  
8             examination.

9             (b) Meetings and discussions of the Commission shall not be open to the  
10            public whenever information being reviewed or discussed is not a public  
11            record or is information acquired pursuant to sections 8611, 8612, and 8613 of  
12            this title. The Commission shall treat as confidential all information that is  
13            sealed, confidential, or privileged as set forth in sections 8611, 8612, and 8613,  
14            except as otherwise directed by court order.

15            (c) The review shall be conducted at least annually and with the purpose of  
16            assessing involuntary commitment process and practice, determining if it is  
17            consistent with section 8601 of this title and if there are any abuses of  
18            discretion in connection with it.

19            (d) The Commission shall prepare a report based upon its review  
20            summarizing its findings, recommendations, and conclusions. The report shall  
21            be provided to the members of the House and Senate Committees on Judiciary.



1 Copies shall be provided to the Attorney General, agencies with jurisdiction,  
2 and the Governor. The report is due no later than January 30 of each year,  
3 beginning January 30, 2015. Prior to release to the public, the Commission's  
4 report shall be redacted of information that is acquired pursuant to sections  
5 8611, 8612, and 8613 of this title, may identify a victim, and is not a public  
6 record. The Commission or other person entitled to the full report shall be  
7 relieved of all liability in connection with a good faith effort to redact  
8 information. The Attorney General shall be responsible for any costs  
9 associated with the preparation of the report.

10 Sec. 2. 4 V.S.A. § 32 is amended to read:

11 § 32. JURISDICTION; CRIMINAL DIVISION

12 (a) The ~~criminal division~~ Criminal Division shall have jurisdiction to try,  
13 render judgment, and pass sentence in prosecutions for felonies and  
14 misdemeanors.

15 (b) The ~~criminal division~~ Criminal Division shall have jurisdiction to try  
16 and finally determine prosecutions for violations of bylaws or ordinances of a  
17 village, town, or city, except as otherwise provided.

18 (c) The ~~criminal division~~ Criminal Division shall have jurisdiction of the  
19 following civil actions:

20 \* \* \*

1           (14) Involuntary commitment proceedings pursuant to 18 V.S.A.  
2           chapter 201.

3           Sec. 3. 13 V.S.A. § 5401 is amended to read:

4           § 5401. DEFINITIONS

5           As used in this subchapter:

6   \* \* \*

7           (8) “Release” means release from confinement or custody or placement  
8           into the community for any reason, including release on bail pending appeal,  
9           probation, parole, furlough, work release, early release, alternative sanctions,  
10          house arrest, daily interrupt, community placement, or completion of sentence.  
11          It shall also mean probation or parole supervision of an out-of-state sex  
12          offender under an interstate agreement or compact, and a sex offender who is  
13          placed on transitional release or who is no longer committed as a result of an  
14          order of final discharge pursuant to 18 V.S.A. chapter 201.

15   \* \* \*

16          (10) “Sex offender” means:

17   \* \* \*

18          (F) A person who has been determined to be a sexually violent  
19          predator pursuant to 18 V.S.A. chapter 201.

20   \* \* \*

1 Sec. 4. 13 V.S.A. § 5404 is amended to read:

2 § 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR  
3 SUPERVISION

4 \* \* \*

5 (f) The Department of Health shall forward to the Department the  
6 following information concerning a sex offender involuntarily committed  
7 pursuant to 18 V.S.A. chapter 201:

8 (1) an update of the information listed in subsection 5403(a) of this title;

9 (2) the address upon transitional release;

10 (3) the name, address, and telephone number of the local office and the  
11 persons in charge of monitoring the sex offender; and

12 (4) documentation of any treatment or counseling received.

13 (g) The Department of Health shall notify the Department within 24 hours  
14 of the time a committed sex offender on transitional release changes his or her  
15 address or place of employment or enrolls in or separates from any  
16 postsecondary educational institution. In addition, the Department of Health  
17 shall provide the Department with any updated information requested by the  
18 Department.

19 (h) The information required to be provided by subsection (e) of this  
20 section shall also be provided by the Department of Health to the caseworkers  
21 and monitors of a sex offender placed on transitional release pursuant to

1 18 V.S.A. chapter 201 prior to the sex offender being released but no later than  
2 24 hours following the transitional release of the sex offender.

3 Sec. 5. 13 V.S.A. § 5406a is added to read:

4 § 5406a. DEPARTMENT OF HEALTH DUTY TO PROVIDE NOTICE

5 With respect to a sex offender placed into its custody by order of  
6 involuntary commitment pursuant to 18 V.S.A. chapter 201, the Department of  
7 Health shall:

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

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

15 (3) require the sex offender to read and sign a form that shall be sent  
16 immediately to the Department, stating that the duty of the sex offender to  
17 register under this section has been explained and is understood; and

18 (4) inform the sex offender that if he or she crosses into another state for  
19 purposes of employment, carrying on a vocation, or being a student, the sex  
20 offender must notify the Department of the new address and shall register with

1 the designated law enforcement agency in the other state, if the other state has  
2 a registration requirement.

3 Sec. 6. 13 V.S.A. § 5407 is amended to read:

4 § 5407. SEX OFFENDER'S DUTY TO REPORT

5 (a)(1) Except as provided in section 5411d of this title, a sex offender shall  
6 report to the ~~department~~ Department as follows:

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

12 (2)(B) annually within 10 days after the registrant's birthday, or if a  
13 person is determined to be a sexually violent predator pursuant to this chapter  
14 or 18 V.S.A. chapter 201, that person shall report to the ~~department~~  
15 Department every 90 days;

16 (3)(C) within three days after any change of address, or transitional  
17 release or final discharge under 18 V.S.A. chapter 201, or if a person is  
18 designated as a high-risk sex offender pursuant to section 5411b of this title,  
19 that person shall report to the ~~department~~ Department within 36 hours;

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



1 (f) A person required to register as a sex offender under this subchapter  
2 shall continue to comply with this section for the life of that person, except  
3 during periods of incarceration or secure and total confinement pursuant to  
4 18 V.S.A. chapter 201, if that person:

5 \* \* \*

6 (3) has been determined to be a sexually violent predator pursuant to  
7 section 5405 of this subchapter or pursuant to 18 V.S.A. chapter 201.

8 \* \* \*

9 Sec. 7. 13 V.S.A. § 5411 is amended to read:

10 § 5411. NOTIFICATION TO LOCAL LAW ENFORCEMENT AND  
11 LOCAL COMMUNITY

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

20 \* \* \*

1           (8) whether the offender complied with treatment recommended by the  
2 Department of Corrections or the Department of Health.

3           (b)(1) Except as provided for in subsections (c) and (e) of this section, the  
4 Department, the Department of Corrections, and any authorized local law  
5 enforcement agency shall release Registry information concerning persons  
6 required to register under State law if the requestor can articulate a concern  
7 about the behavior of a specific person regarding the requestor's personal  
8 safety or the safety of another, or the requestor has reason to believe that a  
9 specific person may be a registered sex offender and can articulate a concern  
10 regarding the requestor's personal safety or the safety of another. However,  
11 the identity of a victim of an offense shall not be released.

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

15                   (A) a general physical description of the offender;

16                   (B) date of birth;

17                   (C) the date and nature of the offense;

18                   (D) whether the offender complied with treatment recommended by  
19 the Department of Corrections or Department of Health pursuant to 18 V.S.A.  
20 chapter 201; and

21                   (E) whether there is an outstanding warrant for the offender's arrest.



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

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

10 (A) the offender's known aliases;

11 (B) the offender's date of birth;

12 (C) a general physical description of the offender;

13 (D) the offender's town of residence;

14 (E) the date and nature of the offender's conviction, and in the case  
15 of a sex offender who is involuntarily committed pursuant to 18 V.S.A. chapter  
16 201, the date, nature, and terms of the order of the commitment;

17 (F) if the offender is under the supervision of the Department of  
18 Corrections, the name and telephone number of the local Department of  
19 Corrections office in charge of monitoring the offender or, if the sex offender  
20 is committed to the Department of Health pursuant to 18 V.S.A. chapter 201,

1 the name and telephone number of the local office and persons in charge of  
2 monitoring the sex offender;

3 (G) whether the offender complied with treatment recommended by  
4 the Department of Corrections or whether the offender complied with  
5 treatment recommended by the Department of Health in the case of a sex  
6 offender involuntarily committed pursuant to 18 V.S.A. chapter 201;

7 (H) whether there is an outstanding warrant for the offender's  
8 arrest; and

9 (I) the reason for which the offender information is accessible under  
10 subdivision (1) of this subsection.

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

17 (B) ~~For purposes of~~ As used in this subdivision, "authorized law  
18 enforcement officer" means a sheriff, a chief of police, the Commissioner of  
19 Public Safety, the State's Attorney of Essex County, or a designee. The  
20 designee shall be a certified law enforcement officer whose authority is granted  
21 or given by the sheriff, chief of police, Commissioner of Public Safety, or

1 State's Attorney of Essex County, either through explicit order or ~~department~~  
2 Department policy.

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

11 (e) After 10 years have elapsed from the completion of the sentence, a  
12 person required to register as a sex offender for life pursuant to section 5407 of  
13 this title who is not designated as a noncompliant high-risk sex offender  
14 pursuant to section 5411d of this title may petition the ~~district court~~ District  
15 Court for a termination of community notification, including the Internet. The  
16 State shall make a reasonable attempt to notify the victim of the proceeding,  
17 and consider victim testimony regarding the petition. If the registrant was  
18 convicted of a crime ~~which~~ that requires lifetime registration or the sex  
19 offender was involuntarily committed pursuant to 18 V.S.A. chapter 201, there  
20 shall be a rebuttable presumption that the person is a high-risk sex offender.  
21 Should the registrant present evidence that he or she is not a high-risk offender,

1 the State shall have the burden of proof to establish by a preponderance of the  
2 evidence that the person remains a high risk to reoffend. The Court shall  
3 consider whether the offender has successfully completed sex offender  
4 treatment. The Court may require the offender to submit to a psychosexual  
5 evaluation. If the Court finds that there is a high risk of reoffense, notification  
6 shall continue. The Vermont Rules of Civil Procedure shall apply to these  
7 proceedings. A lifetime registrant may petition the Court to be removed from  
8 community notification requirements once every 60 months. The presumption  
9 under this section that a lifetime registrant is a high-risk offender shall not  
10 automatically subject the offender to increased public access to his or her  
11 status as a sex offender and related information under subdivision (c)(1) of this  
12 section or section 5411a of this title.

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

1 Sec. 8. 13 V.S.A. § 5411a is amended to read:

2 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

3 (a) Notwithstanding 20 V.S.A. §§ 2056a - 2056e, the Department shall  
4 electronically post information on the Internet in accordance with subsection  
5 (b) of this section regarding the following sex offenders, upon their release  
6 from confinement:

7 \* \* \*

8 (4) Sex offenders who have been designated as sexual predators  
9 pursuant to section 5405 of this title or pursuant to 18 V.S.A. chapter 201.

10 \* \* \*

11 (b) The Department shall electronically post the following information on  
12 sex offenders designated in subsection (a) of this section:

13 \* \* \*

14 (6) the date and nature of the offender's conviction or in the case of a  
15 sex offender who is involuntarily committed pursuant to 18 V.S.A. chapter  
16 201, the date, nature, and terms of the order of the commitment;

17 (7) if the offender is under the supervision of the Department of  
18 Corrections, the name and telephone number of the local Department of  
19 Corrections office in charge of monitoring the sex offender or, in the case of a  
20 sex offender who is involuntarily committed pursuant to 18 V.S.A. chapter

1 201, the name and telephone number of the local office or persons in charge of  
2 monitoring the sex offender;

3 (8) whether the offender complied with treatment recommended by the  
4 Department of Corrections or, in the case of a sex offender who is  
5 involuntarily committed pursuant to 18 V.S.A. chapter 201, whether the  
6 offender complied with treatment recommended by the Department of Health;

7 \* \* \*

8 Sec. 9. 13 V.S.A. § 5411c is amended to read:

9 § 5411c. ACTIVE COMMUNITY NOTIFICATION BY THE  
10 DEPARTMENT OF PUBLIC SAFETY, THE DEPARTMENT OF  
11 CORRECTIONS, THE DEPARTMENT OF HEALTH, AND  
12 LOCAL LAW ENFORCEMENT

13 (a) Notwithstanding other provisions to the contrary, the ~~department~~  
14 Department, the ~~department of corrections~~ Department of Corrections, the  
15 Department of Health in the case of a person who had been involuntarily  
16 committed pursuant to 18 V.S.A. chapter 201, and any authorized local law  
17 enforcement agency are authorized to notify members of the public at their  
18 discretion about any sex offender whose information is required to be posted  
19 on the Internet in accordance with section 5411a of this title.

20 (b) The ~~department~~ Department, the ~~department of corrections~~ Department  
21 of Corrections, the Department of Health in the case of a person who had been

1 involuntarily committed pursuant to 18 V.S.A. chapter 201, and any authorized  
2 local law enforcement agency are authorized to notify members of the public at  
3 their discretion about a sex offender whose information is not required to be  
4 posted on the Internet in accordance with section 5411a of this title only under  
5 circumstances which constitute a compelling risk to public safety and only  
6 after consultation with the Vermont ~~crime information center~~ Crime  
7 Information Center and the ~~department of corrections~~ Department of  
8 Corrections.

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

17 \* \* \*

18 Sec. 10. EFFECTIVE DATE

19 This act shall take effect on July 1, 2014.