

TRAINING BULLETIN 2004 LEGISLATIVE UPDATE

INTRODUCTION

This year, there are very few bills which directly affect law enforcement. The one bill which perhaps has generated the most questions is the Medical Marijuana bill, which is outlined in detail below. Also note that part of the Identity Theft bill does not go into effect until July 1, 2005, while the rest of it is effective as of July 1, 2004.

The following subject areas are contained in this training bulletin:

CRIMINAL CODE CHANGES

[Animal Cruelty](#)

[Identity Theft](#)

[Snowmobiles](#)

DRUGS

[Medical Marijuana](#)

JUVENILES

[Court Diversion; Sealing of Records](#)

MOTOR VEHICLES

[Abandoned Motor Vehicles](#)

[Driver's Licenses](#)

SEX OFFENSES

[Sex Offender Registry](#)

MISCELLANEOUS

[Restitution](#)

[Memorial Day](#)

[Interpreter Privilege](#)

[Fire Safety Division within the Department of Public Safety](#)

CRIMINAL CODE CHANGES

Snowmobiles [H 397](#) - Effective Date: 7/1/04

Comment: New maximum width established at 48 inches. ATV converted to run with tracks is not a snowmobile. Closed season is

April 16 – Sunday in December preceding the third Monday. SWI penalties changed to conform with DWI penalties.

Penalties and fines have changed: Now \$135.00 (up from \$110.00) for some violations, \$500.00 for others, and misdemeanors created for the following offenses:

- intentionally causing animal pain or suffering
- reckless operation
- leaving scene of an accident
- attempting to elude

A second conviction for any of the above earns an offender a potential 2 year sentence and a maximum fine of \$3,000.00.

A new section provides for law enforcement officers to conduct safety inspections on snowmobiles stopped for other snowmobile law violations on the statewide trail system. Safety inspections may also be conducted in a designated area by law enforcement officials. The designated area shall be warned solely by blue lights either on a stationary snowmobile parked on a trail or on a cruiser parked at a roadside trail crossing.

Cruelty to Animals [S 100](#) - Effective Date: 7/1/04

13 VSA §351 amended to provide clear definitions for 1) Living Space, 2) Adequate Food, 3) Adequate water, and; 4) Adequate shelter

13 VSA §352(a) amended to add another act that constitutes aggravated cruelty to animals: “intentionally, maliciously and without just cause tortures, mutilates or cruelly beats an animal.”

If a juvenile is convicted, the court can now order the juvenile to undergo a psychiatric or psychological evaluation and to participate in treatment.

13 VSA §354 is amended to change the forfeiture procedure. New language eliminates a security deposit and provides for the State to institute forfeiture proceedings within 7 days after an acquittal. If no such proceeding, animal must be returned to defendant.

Identity Theft [H 327](#) - Effective Date: 7/1/04 - **This portion only.**

Criminalizes identity theft; provides for a security freeze on credit reports. 13 VSA §2030:

(a) One shall not obtain, produce, possess, use, sell, give, or transfer personal identifying information belonging or pertaining to another with intent to use the information to commit a misdemeanor or felony.

(b) One shall not knowingly or recklessly obtain, produce, possess, sell, give, or transfer personal identifying information belonging or pertaining to another without the consent of the other person AND knowingly or recklessly facilitate the use of the information by a third person to commit a misdemeanor or felony.

“Personal identifying information” means name, address, DOB, SSN, MVPID, telephone number, financial services account, savings account, checking account, credit card, debit card, numbers, picture, ID document, false ID document, electronic ID #, educational, health care, financial, credit and employment records, e-mail address, computer system password or other’s maiden name or similar personal number, record or information.

DOESN’T apply if the personal identifying information was obtained for the sole purpose of obtaining alcohol, tobacco or another privilege denied based on age.

Affirmative defense (consent) by a preponderance.

Penalty: 1st offense: 3 years and/or \$5,000.00 fine

2nd: (separate scheme): 10 years and/or \$10,000.00 fine

Effective date: July 1, 2005:

ID theft complaints begin to be taken by State Police and local law enforcement agencies. §2480(k) provides:

A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another....may make a complaint about the unlawful use of personal identifying information to the state police or to the person's local law enforcement agency. The law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint, the name of the law enforcement officer taking the complaint, and an incident number or case number assigned to the complaint by the law enforcement agency. If the suspected crime was committed in a different jurisdiction, the law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint, the name of the law enforcement officer

taking the complaint, and an incident number or case number assigned to the complaint by the law enforcement agency and refer the complaint to a law enforcement agency in that different jurisdiction.

DRUGS

Medical Marijuana [S 76](#) - Effective Date: July 1, 2004 - Registry in place by November 1, 2004

Comment – The short version of this bill is as follows:

If a person is a “registered patient”, or a “registered caregiver”, he or she can legally possess no more than 1 mature marijuana plant, 2 immature plants and 2 ounces of marijuana. A “registered patient” or a “registered caregiver” can grow marijuana but only in a single, secure indoor facility. A “registered patient” or “registered caregiver” can transport marijuana in public but only in a secure, locked container. “No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of a registered patient or registered caregiver engaged in use of marijuana for symptom relief.” This allowance does NOT exempt the patient from arrest or prosecution for: operating under the influence of marijuana, being under the influence of marijuana in a place of employment, operating heavy machinery or handling dangerous instrumentality under the influence of marijuana, smoking it in a public place or using it in a manner “that endangers the health or well-being of another person”.

DPS is charged with screening all applications for registered patients and registered caregivers. Photo I.D. cards will be issued by VCIC.

MOTOR VEHICLES

Abandoned Motor Vehicles [S 12](#) - Effective Date: 7/1/04

COMMENT: This bill is a response to some issues regarding tow truck operators lawfully towing cars – at police request – and then having the registered owners never retrieve their car from the lot, or having a bank repossess the car but refuse to pay the towing or

storage fees. In the past, the tow operator tried to come after law enforcement agencies for compensation when law enforcement really were not the culprit. This bill allows the tow operator to recoup tow fees and storage charges from an owner or lien holder reclaiming an abandoned motor vehicle.

A law enforcement officer is authorized to remove or cause removal of an abandoned motor vehicle from public property based upon personal observation by the officer that the vehicle is abandoned. * Note that construction vehicles are exempt from this definition, so long as they are left in a manner which does not interfere with the normal movement of traffic.* Law enforcement officers are also authorized to remove or cause removal of an abandoned motor vehicle from private property based upon a complaint of the owner or agent of the property where the vehicle is abandoned.

Driver's Licenses [H 199](#) - Effective Date: 7/1/04

Provides for photos on all new driver's licenses, identification cards; must have new photo taken every 8 years. Persons who obtained an i.d. card or a license with no photo prior to July 1, 2004, are not required to obtain one with a photo. Adds a section with detailed requirements for citizens of foreign countries who apply for a driver's license or i.d. card. Use and distribution of the photograph is restricted but is allowed "for use by a law enforcement agencyin carrying out its official business".

COURT DIVERSION

Sealing of Records (Within S 227 – the sex offender bill) - Effective Date: 7/1/04

Comment: This amendment will significantly increase the number of cases that will be sealed. It will be an automatic sealing process triggered by the two year anniversary date of a completed diversion. These records will be unavailable for use for anything (bail requests, probation violations, sentencing on future cases, etc). It applies to all juvenile diversion records as well as adult diversion records. The State's Attorney will have an opportunity to be heard prior to sealing diversion records. The automatic sealing process for adults only applies to those persons who completed diversion after July 1, 2002.

13 VSA §163 is amended to provide sealing of juvenile's diversion records if certain conditions are met. Below is the new language:

Within 30 days of the two-year anniversary of a successful completion of juvenile diversion, the court shall provide notice to all parties of record of the court's intention to order the sealing of all court files and records, law enforcement records other than entries in the juvenile court diversion project's centralized filing system, fingerprints, and photographs applicable to a juvenile court diversion proceeding. The court shall give the state's attorney an opportunity for a hearing to contest the sealing of records. The court shall seal the records if it finds:

- (1) two years have elapsed since the successful completion of the juvenile court diversion program by the participant and the dismissal of the case by the state's attorney;
- (2) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction; and
- (3) rehabilitation of the participant has been attained to the satisfaction of the court.

(f) Upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this section shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

(g) Inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the participant who is the subject of such records and only to those persons named therein.

SEX OFFENSES

Sex Offender Registry S 227 - Effective Date: parts of the bill: 7/1/04 (As passed version of this bill is not available on line, thus no link.)

All law enforcement agencies should have already received more detailed information from VCIC with specifics on the sex offender registration law changes.

Reporting requirements now include, upon conviction and release, reporting the name and address of any post secondary school where the offender is enrolled.

The annual date of reporting has changed to be within 10 days of the offender's birthday. (It used to be within 10 days of the anniversary of release date.) Provisions for homeless sex offenders reporting requirements are also added.

Guidelines around releasing sex offender information are spelled out in the bill, as well as provisions for internet posting of sex offenders. All law enforcement agencies are mandated to keep a log of people requesting sex offender information.

IMMUNITY FOR LAW ENFORCEMENT:

(a) 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.

(b) Nothing in this subchapter shall be construed to prevent the department, the department of corrections, and any authorized local law enforcement agency from notifying members of the public who are likely to encounter a sex offender who poses a danger under circumstances that are not enumerated in this subchapter.

(c) Notification of the community beyond those persons likely to encounter a sex offender shall be authorized only under circumstances which constitute a compelling risk to public safety and only after consultation with the Vermont crime information center and the department of corrections.

MISCELLANEOUS

Restitution ([S 302](#)) Officers as Victims - Effective Date: 4/13/04

13 VSA §5351(7) DEFINITION OF VICTIM is amended to include law enforcement officers as eligible victims for purposes of restitution. Victim now means "an intervener who is injured or killed in an attempt to assist the person" who sustains injury or death as a direct result of the commission or attempted commission of a

crime.” Now defendants are accountable for officer injuries as well as victims’ injuries.

Memorial Day ([H 183](#)) - Effective date: 7/1/04

State holiday will now be the last Monday in May. Mark your calendars.

Interpreter Privilege ([H 79](#)) - Effective Date: 7/1/04 - (As passed version of this bill is not available on line, thus no link.)

Creates a privilege for interpreter communications between a hearing impaired person and his/her interpreter. Exception for the use of the interpreter for the purpose of enabling or aiding anyone to commit or plan to commit what the hearing impaired person knew or reasonably should have known to be a crime or fraud.

- Doesn’t matter if the interpreter is “qualified” or not – still a privilege.

Study Committee created to determine whether or not the privilege should extend to non-English speaking persons who use a foreign language interpreter.

Fire Safety Division ([H 754](#))

Effective Dates July 1, 2004 for the Fire Safety Position and transfer of 36 positions currently in Labor and Industries
May 1, 2004, for creation of Task Force created for public input
April 1, 2005, for remainder of the provisions of the bill.

Adds Fire Safety to the Department of Public Safety and removing it from the Department of Labor and Industries. Creates a director of Fire Safety.