

Legislative Report

By Ed Miller

The 2004 legislative session came to an end late Thursday night, May 21. Although lawmakers are scheduled to return to Montpelier for a special session to deal with a vetoed bill, another regular session won't begin until January, 2005, when a new two-year biennium will begin.

For law enforcement, this was once again a busy and successful session. Representatives of the VPA testified on over a dozen bills, and special thanks are due to Capt. Scott Tucker, our legislative chair, for the many hours he spent this winter and spring in Montpelier. Scott's testimony and insight was highly valued by lawmakers, and was of great assistance in getting the job done at the State House.

First, a summary of bills which *passed* this session. Although this list is fairly comprehensive, it does not necessarily summarize every single bill of potential interest to law enforcement. It does, however, summarize many of the bills and issues identified as important to the members of Vermont's law enforcement community. Any errors or omissions are mine, and I would appreciate any corrections or clarifications which may be needed.

BILL PASSED

S. 12 (Act #101) This bill enacts a new subchapter of law and more definitive removal of abandoned vehicles. It authorizes a law enforcement officer to remove or cause the removal of an abandoned motor vehicle, on either public or private property. A vehicle will be considered abandoned after 48 hours if plates are still attached, but may be considered abandoned immediately if no plates are attached. The bill describes the process involved in attempting to contact the owner, and the process wherein a towing service may get title to the abandoned

vehicle if it is not claimed in a timely fashion. The bill specifically authorizes towing and storage fees to be charged by the towing company. Finally, the bill states that any municipal ordinances on the subject are not pre-empted.

S. 76 (Act #___) This bill, which went into effect without the signature of Governor Douglas, describes a process where people with well-defined "debilitating medical conditions" can lawfully possess and use marijuana for treatment of their medical conditions and symptoms. Medical marijuana is available only if other "reasonable medical efforts" haven't been successful over time, and the applicant is duly registered with the department of public safety. Upon application, DPS will contact the physician named by the applicant to check on his or her condition, and may approve the application at that point. If a patient's application is denied, he or she may appeal to a three-physician appeal board. A registered caregiver may be appointed by the applicant if the caregiver has not been convicted of a drug-related crime and pays an annual \$100 fee. In general, the smoking of any marijuana for medical relief must be done in private, and no smoking of marijuana in any public place is allowed. Finally, the bill calls for a report from DPS by January 1, 2006.

S. 100 (Act #120) This act amends Vermont's law on cruelty to animals, both by amending the criminal statutes on cruelty to animals and by defining the required living space, shelter, and nutritional needs of animals. The bill also sets up a civil forfeiture process when there is an allegation of abuse of an animal. The size of an animal's minimum living space is defined, based on the size of the animal, and exercise requirements are specified for most caged animals. Psychiatric and psychological evaluations may be required for any juveniles convicted of mistreating animals.

S. 225 (Act #119) This bill deals with the membership of the criminal justice training council, and replaces the representative of Vermont troopers association with a member of the state police bargaining unit of the Vermont state employees association.

S. 227 (Act #___) This bill sets up a sexual offender registry and requires certain sex offenders to register their names and addresses. In general, convicted sex offenders are required to register their names, addresses, places of employment, and postsecondary educational institutions. The department of public safety is required to give local law enforcement pertinent information about the off-ender.

The department is also required to post pertinent information on the Internet, beginning October 1, 2004. The Department of Corrections is allowed to determine and designate an offender as "high-risk." The bill also makes changes in the adult and juvenile court diversion programs, and provides for the opportunity to seal certain records if a successful diversion is achieved. The bill gives the Department of Public Safety the responsibility of training law enforcement and corrections personnel on the operations of the sex offender registry and administration of the act. Finally, the bill voids any "no print, no record" rule or policy of the Vermont Crime Information Center. Enactment of this bill was a law enforcement priority this year.

S. 255 (Act #73) This bill deals with access to juvenile proceedings by victims of crime. In general, it provides the victim with more information as to the perpetrator's identity and location on release when the conditions of release "relate to the victim or a member of the victim's family..." The bill specifies that the victim of a delinquent act involving a listed crime has the right to be present at the disposition hearing, and may testify on the impact of the crime and the need for restitution. For victims of ►

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fisted crimes committed by juveniles, an expanded list of rights and remedies is included in the bill. Officers involved in juvenile proceedings should probably review this bill, particularly since there are other provisions which aren't easily summarized in a sentence or two.

S. 302 (Act #92) This bill makes changes in our law on restitution. Among several other provisions, the bill makes clear that a law enforcement officer may qualify as a victim and thus seek restitution. The bill also authorizes an attachment procedure for any lottery winners who owe delinquent child support.

H. 199 (Act #__) This bill requires newly licensed drivers to have a photograph on their license. The bill also specifies that the commissioner of DMV will not release a photograph or likeness obtained from a driver's license to anyone but government agencies. However, subsequent use and distribution of the photograph is allowed for law enforcement purposes. Enactment of this bill was a priority for Vermont law enforcement. License fees are increased slightly, both for regular licenses and commercial drivers' licenses.

H. 322 (Act#__) This bill establishes the new crime of identity theft, and provides procedures for Vermonters who are victims of identity theft. It allows victims of identity theft to place a security freeze on their credit reports pending resolution of the problem. The bill spells out a complaint process for those who are victims of identity theft. Violation of the law can result in imprisonment of as much as ten years, a fine of \$10,000, or both.

H.397 (Act #116) This bill makes changes in our snowmobile law. First, the bill increases the allowable, "curb weight" of snowmobiles, increasing the allowable weight from 1,000 lbs. to 1,750 lbs., with an allowable width of 48 inches. The bill defines the closed season, and allows operation on certain frozen lakes, without registration, if and when that operation is approved by the Agency of Natural Resources. Snowmobile related offenses are added and amended, and fines for violations are increased. Some

penalties are substantial, and some involve the possibility of imprisonment.

H. 471 (Act #109) This is a miscellaneous motor vehicle bill which contains several items of interest to law enforcement. First, the issue of what vanity plates are allowed (or not allowed) is addressed. Fines for illegally operating a driver training school are increased. "Agricultural services" vehicles are defined and allowed on town roads without municipal permits. "Traffic offenses" are redefined so that truck weight violations are no longer criminal, and may be brought initially in the traffic bureau instead of in district court. (A court appeal, with or without a jury, is still possible.) Finally, the bill directs the commissioners of motor vehicles and information and innovation to study the possibility of a centralized permitting system for commercial vehicles using town roads.

H-516 (Act __) This bill prohibits the sale or use of a lead sinker for taking fish in any state waters. The prohibition on sales takes effect January 1, 2006, with the prohibition on use taking effect January 1, 2007.

H. 528 Act #__) This bill provides that the term of probation for misdemeanors be for a specific term, not to exceed two years, unless special circumstances warrant a longer term. The bill allows the commissioner of corrections to determine where a minor will be detained, and specifies, that a person under 18, who has not been adjudicated a youthful offender, may be detained at the Woodside correctional facility if the offense charged is a misdemeanor.

H. 538 (Act #__) This bill states that municipal parking violations are within the jurisdiction of the district courts, providing persons contesting the violations have first exhausted municipal administrative procedures. When filed in court, parking violations are treated as civil matters, but no right to jury trial exists. For people who received criminal convictions for unsuccessful appeals of parking tickets, an opportunity to seal those records exists. The bill also deals with some jury service issues.

H. 585 (Act #80) This is the 2004

Budget Adjustment Act. Among many other provisions, the bill appropriates \$50,000 to the attorney general's office to establish a training program for selected law enforcement officers to assist them in their interactions with people exhibiting mental health problems. A \$50,000 appropriation is also made to the Department of Public Safety in order to expedite the processing of DNA evidence held by the department.

H. 590 (Act #79) This bill deals with the safety and security of alcoholic beverages, and the possibility that an unattended drink will be tampered with or compromised through the insertion of drugs or other foreign substances. As such, the bill allows a person to maintain personal contact with his or her alcoholic beverage at all times (such as dancing) and allows a patron to carry as many as two alcoholic beverages at one time, thus avoiding the situation where one drink is set down somewhere unattended while another one is being obtained.

H. 622 (Act # 117) This bill defines "bullying," and requires schools to recognize the problem in their plans for student misbehavior. The bill requires the commissioner of education to update and distribute a model plan on school discipline. A 2007 report to the legislature is required, the report to be submitted by the commissioner of education.

H. 775 (Act #M014) This bill approves changes in the Burlington City Charter. Among other provisions, it states that applicants for the police force will be approved and appointed by the chief rather than the board of police commissioners. The revisions also give the chief of police more power in terms of disciplining, suspending or dismissing a member of the police force. Finally, the bill allows UVM police officers to enforce city of Burlington municipal ordinances.

H. 767 (Act #__) This is the so-called capital construction bill which, in general, authorizes construction and repair to Vermont facilities, acquisition of other facilities and land, and a variety of other wide-ranging activities and provisions, most of which relate to Ver-

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mont's capital assets and improvements. It has several provisions of interest to law enforcement.

- First, the bill allows cities, towns, villages, and UVM as well as sheriffs and state agencies, to enter into inter-municipal police service agreements for a variety of things, including general police services and emergency planning. Agreements may be made among any of the departments designated, or with municipalities in adjoining states. Enactment of this provision was a priority for law enforcement this year.

- The bill enacts the International Emergency Management Assistance Compact.

- The bill creates a study committee to look into whether law enforcement training opportunities are equally available to individuals in all regions of the state. The president of the VPA is named as a member of the committee.

- Subject to some constraints, the bill authorizes the construction of new state police facilities in St. Albans, Middlebury, and Royalton.

- The bill authorizes the expenditure of \$370,000 for repairs to the Pittsford training facility.

- The bill requires the commissioner of the department of buildings and general services to consult with law enforcement officials about co-location of the health and criminal justice forensic science laboratories, once it is determined where a co-located lab would be established.

H. 768 (Act #__) This is the 2004 appropriations bill, which provides and authorizes money for the support of state government for the fiscal year beginning July 1, 2004. There are several provisions of interest to law enforcement.

1) The bill directs the various parties involved with prisoner transport to implement the findings of the 2002 study of prisoner transport. Another report on this subject is due on January 15, 2005.

2) The bill states that the department of liquor control shall not implement its so-called "shoulder tap" tobacco program without the specific consent of the general assembly. DLC is required to con-

tinue its compliance testing program to assure a 90% compliance rate by 17 year olds to purchase tobacco products.

3) The bill provides that DPS will provide business manager services for the Vermont fire service training council.

4) The bill appropriates \$35,000 in special funds for snowmobile law enforcement activities, and \$35,000 to the southern Vermont wilderness search and rescue team.

5) \$75,000 is earmarked for transfer to the criminal justice training council for maintaining its canine program.

6) \$50,000 is appropriated to the Vermont center for justice research to carry out a study and report on racial and ethnic involvement in Vermont's criminal justice system.

7) \$230,000 is allocated for local heroin interdiction grant money, with \$190,000 to be used by the Vermont drug task force to find three task force officers. The remaining \$40,000 will remain available to local and county law enforcement for drug-related overtime expenditures. Continued funding for municipal drug efforts was a law enforcement priority this year.

8) The bill contains provisions, similar to those in the capital construction bill (H. 767) allowing towns to form inter-municipal police service agreements for general police services and emergency planning.

9) The bill creates a law enforcement advisory board, which includes a member of the VPA, appointed by the president. The board will meet as many as six times a year to discuss law enforcement policies and practices.

10) \$50,000 is appropriated to DPS for the purpose of implementing the recruitment recommendations of the law enforcement advisory board.

11) The bill directs the director of VCIC to maintain all criminal records, regardless of whether the record is supported by fingerprints. Any "no print, no record" rule or policy of VCIC is voided.

12) The court administrator is directed to review the existing means of providing court security, and make recommendations for the future. Private secu-

rity services are specifically mentioned as a possibility.

13) The bill authorizes the appointment of a juvenile justice director, who will report directly to the secretary of the agency of human services. The tasks and functions of the director are listed.

14) The bill states that classified state employees working as investigators for the department of health, who have received training and certification as police officers, shall have the same powers as sheriffs in criminal matters and in serving criminal process, and shall enjoy the same immunities and defenses available to sheriffs.

15) \$500,000 is appropriated for a new state crime lab.

16) \$25,000 is appropriated to the office of state's attorneys for a temporary deputy state's attorney in Addison County.

17) A new criminal code study committee is appointed, to include a representative of the VPA.

18) "Normal retirement dates," for most state employees are amended by including an age for normal retirement, plus a new provision requiring the completion of five years of creditable service for members hired after July 1, 2004.

In reviewing the activities of the two-year legislative biennium, it is probably also noteworthy to list several bills which *didn't pass*, some of which received a good deal of attention and testimony at the State House. Noteworthy bills which didn't pass this biennium include the following:

BILLS NOT PASSED

S. 1 — railroad trespass

S. 120 — home improvement fraud

S. 129 — duties and authority of environmental enforcement officers

S. 169 — would permit the development of an industrial hemp industry in Vermont

S. 199/H. 575 — prohibition on use of cell-phones in vehicles

S. 279 — would expand the opiate treatment options for opiate addiction programs (state law allowing this ➤

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may not be necessary; federal law supposedly allows this already.)

H. 36 — Allows a judge to impose a deferred sentence without the request of a state's attorney

H. 51 — Provides that, in cases where a school bus has been illegally passed by a driver who has not been identified, that it shall be prima facie evidence that the registered owner of the vehicle was driving.

H. 135 — expungement of certain criminal records

H. 167 — repeal of motorcycle helmet law

H. 316 — single registration plate

H.3 69 — inspection of amusement rides

H. 440 — would prohibit unmarked law enforcement vehicles from conducting minor motor vehicle stops

H. 505 — "hardship" exemptions for DWI suspensions

H. 556 — Sharing of fine money for traffic enforcement when assessment was result of municipal police enforcement

H. 586 — Would require LEOs to specifically inform drivers of their right to refuse a search when asking consent to search

H. 594 — Allows temporary detention of a person suspected of committing a civil offense for the purpose of ascertaining the person's identity.

H. 669 — Proposes to make most internal investigations of police officers confidential

Many of these bills will be back, in one form or another, next year, or in future years. Some just never seem to go away!

If anyone, has any questions on legislation, you can call me at 802-485-8397, call the Legislative Council at 802-828-2231, or access the legislative website at www-leg-state-vt.us. Between these various sources, we ought to be able to answer most questions!

Best wishes to you all for the summer, and keep safe! I look forward to seeing you all at our annual meeting this fall. □