

TO: Judge Thomas Zonay (Chair, Sentencing Commission)

FROM: Timothy Lueders-Dumont, Department of State's Attorneys and Sheriffs; Jennifer Poehlmann, Vermont Center for Crime Victim Services; Tucker Jones, Department of Public Safety; Farzana Leyva, Orleans County State's Attorney

RE: Joint Recommendation to the Vermont Sentencing Commission and corresponding Subcommittee concerning whether to expand the "Big 12" (33 V.S.A. § 5204(a))

DATE: December 4, 2023 (submitted, in full, on October 17, 2023 to the subcommittee and to the full Sentencing Commission on October 30, 2023)

Pursuant to Act 23, enacted during the 2023 legislative session, the Vermont Sentencing Commission is required to submit a report by December 15, 2023 "to the Joint Legislative Justice Oversight Committee and the Senate and House Committees on Judiciary on whether the offenses for which transfer from the Family Division to the Criminal Division is permitted under 33 V.S.A. § 5204(a) should be expanded" At present, 33 V.S.A. § 5204(a) (or the "Big 12") sets forth a list of 12 offense categories, known in practice as the "Big 12."

The Big 12 provides a list of offenses which may be filed either into the Criminal Division of Vermont's Superior Court ("the Criminal Division") or filed directly¹ into the Family Division of Vermont's Superior Court ("the Family Division") under "Youthful Offender" status ("YO").² While the Big 12 provides for a presumption that certain offenses be filed in the Criminal Division, the Big 12 does not command nor mandate that a case remain in the Criminal Division (*may be filed directly as YO into the Family Division or may be transferred by stipulation*). If a Big 12 offense is filed in the Criminal Division counsel for a defendant may file a motion, and be heard at a hearing, requesting that the case be transferred to the Family Division as YO. For offenses that fall under the umbrella of a Big 12 filing, the prosecutor may exercise discretion to file as a Big 12 in the Criminal Division, to file directly as YO into the Family Division, to agree to a stipulation concerning transfer of jurisdiction, or not to file in the first place.³ Act 23 (or "S.4")⁴ as enacted and testimony is linked in the footnotes. S.4 as passed by the Senate included four additions to the Big 12.⁵ Also embedded in footnotes, are resources with information relating to "Big 12" filings⁶ as well as juvenile versus criminal jurisdiction;⁷ studies and articles relating to firearm violence and violent crime victimization in Vermont and across the country;⁸ and related legislative proposals.⁹

SAS, CCVS, DPS Joint Recommendation For Expansion of 33 V.S.A. § 5204(a) Pursuant to Section 15 of Act 23

Question One: *Should the list, known as the Big 12, under 33 V.S.A. § 5204(a), be expanded?*

Answer to Question One: *Yes.* In concurrence with the Senate-passed version of S.4¹⁰ during the 2023 legislative session, consistent with extensive testimony collected in the Senate Committee on Judiciary and later

¹ "Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) ["the Big 12"] of this title after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's Attorney files the charge directly as a youthful offender petition in the Family Division." 33 V.S.A. § 5201.

² Pursuant to Act 23, cases may also be sent to the Family Division by stipulation and judicial approval.

³ In each case, even if the prosecutor does not wish to file as a YO, or stipulate to a YO, the defense may always request for YO consideration, which results in a hearing in the Family Division.

⁴ Senate testimony linked here: [Documents & Handouts | Senate Committee on Judiciary \(vermont.gov\)](#); House testimony linked here: [Documents & Handouts | House Committee on Judiciary \(vermont.gov\)](#).

⁵ S.4 as passed by the Senate is linked here: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0004/S-0004%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>.

⁶ 33 V.S.A. § 5204.

⁷ Resources concerning jurisdiction presented during the 2023 Session are linked here: [DCF](#), [DGO](#), [Leg. Co.](#), and a [retired judge](#).

⁸ Resources linked here: [S.4: Written Testimony on Behalf of the Department of State's Attorneys and Sheriffs](#); [S.4: Criminal Justice Responses to Black Victimization](#); [S.4: Survey Says 1 in 5 Adults Say They've Been Threatened with a Gun at Some Point](#); and [S.4: Kamala Harris Said 1 in 5 Americans Have Lost Family to Gun Violence. A Poll Backs That](#).

⁹ Governor's Big 12 expansion recommendation linked here: [S.4: Administration Proposed changes to S.4](#); [S.4: Testimony from DCF](#).

¹⁰ S.4 as passed by the Senate is linked here: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0004/S-0004%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>.

in the House Committee on Judiciary, the Executive Committee of State's Attorneys ("SAS"), the Vermont Center for Crime Victim Services ("CCVS"), and the Department of Public Safety ("DPS") are in support of expansion of the offenses in the statutory list currently known as the "Big 12."¹¹ As such, SAS, CCVS, and DPS recommend that 33 V.S.A. § 5204(a) be amended as noted below, resulting in a list of 17 offense categories.¹²

Question Two: *What offenses should be added to the list, known as the Big 12, under 33 V.S.A. § 5204(a)?*

Answer to Question Two: Generally consistent with S.4 as passed by the Vermont Senate,¹³ the following offense categories should be added to 33 V.S.A. § 5204(a):

- **Carrying a dangerous weapon while committing a felony in violation of 13 V.S.A. § 4005 (or attempt)** (included in S.4 as passed by Senate and in the list of recommendations for potential expansion in Act 23 as signed into law);
- **Human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653 (or attempt)** (included in S.4 as passed by Senate and in the list of recommendations for potential expansion in Act 23 as signed into law);
- **Trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1 (or attempt)** (included in S.4 as passed by Senate and in the list of recommendations for potential expansion in Act 23 as signed into law);
- **Domestic assault as defined in 13 V.S.A. § 1042, first degree aggravated domestic assault as defined in 13 V.S.A. § 1043, and second degree aggravated domestic assault as defined in 13 V.S.A. § 1044 (or attempt)** (not in S.4 as passed by the Senate but included in the list of recommendations for potential expansion in Act 23 as signed into law); and,
- **Aggravated stalking as defined in 13 V.S.A. § 1063(a)(3) (or attempt)** (included in S.4 as passed by Senate and in the list of recommendations for potential expansion in Act 23 as signed into law).

Advocacy for expansion of the offenses, bolded and noted above, should not be construed as a lack of advocacy or support for other offenses, including those noted in S.4 as passed by the Senate and Act 23. While the Big 12 provides for a presumption that certain offenses be filed in the Criminal Division, the Big 12 does not command nor mandate that a case remain in the Criminal Division (*may be filed directly as YO into the Family Division or may be transferred by stipulation*).

¹¹ 33 V.S.A. § 5204.

¹² Expansion would not negate the statutory allowance that for each offense, where it applies, where an individual may be charged in the Criminal Division under 33 V.S.A. § 5204, the case may also be filed directly in the Family Division as a YO by the prosecutor or by stipulation of the parties. It should be noted that advocacy for expansion of the offenses, bolded and noted below, should not be construed as a lack of advocacy or support for other offenses noted in Act 23 for consideration and expansion, or otherwise appropriate.

¹³ S.4 as passed by the Senate is linked here: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0004/S-0004%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>.