

1 H.95

2 Introduced by Representatives Jewett of Ripton, Grad of Moretown,  
3 Rachelson of Burlington, and Viens of Newport City

4 Referred to Committee on

5 Date:

6 Subject: Human services; delinquency proceedings

7 Statement of purpose of bill as introduced: This bill proposes to require that  
8 all charges involving criminal conduct by children under 18 years of age be  
9 filed as delinquency proceedings in the Family Division of the Superior Court  
10 rather than the Criminal Division. The bill provides the Family Division with  
11 the authority to transfer the proceedings to the Criminal Division in certain  
12 circumstances depending on the age of the child and the seriousness of the  
13 offense.

14 An act relating to jurisdiction over delinquency proceedings by the Family  
15 Division of the Superior Court

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

17 Sec. 1. ~~33~~ V.S.A. § 5201 is amended to read:

18 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

19 (a) ~~Except as otherwise provided in this chapter, all delinquency~~  
20 ~~proceedings shall be in the Family Division of the Superior Court.~~

21 Proceedings under this chapter shall be commenced by:

1 ~~(1) transfer to the Court of a proceeding from another court as provided~~  
2 ~~in section 5203 of this title; or~~

3 ~~(2) the filing of a delinquency petition in the Family Division by a~~  
4 ~~State's Attorney.~~

5 ~~(b) If the proceeding is commenced by transfer from another court, no~~  
6 ~~petition need be filed; however, the State's Attorney shall provide to the Court~~  
7 ~~the name and address of the child's custodial parent, guardian, or custodian~~  
8 ~~and the name and address of any noncustodial parent if known. [Repealed.]~~

9 ~~(c) Consistent with applicable provisions of Title 4, any proceeding~~  
10 ~~concerning a child who is alleged to have committed an act specified in~~  
11 ~~subsection 5204(a) of this title after attaining the age of 14, but not the age of~~  
12 ~~18, shall originate in the Criminal Division of the Superior Court, provided that~~  
13 ~~jurisdiction may be transferred in accordance with this chapter. [Repealed.]~~

14 \* \* \*

15 Sec. 2. 33 V.S.A. § 5202(a)(2) is amended to read:

16 (2) Notwithstanding subdivision (1) of this subsection, an order of  
17 delinquency in proceedings transferred under ~~subsection 5203(b)~~ section 5203  
18 of this title, where the offense charged in the initial criminal proceedings was a  
19 violation of those sections of Title 23 specified in ~~subdivision 23 V.S.A.~~  
20 § 801(a)(1), shall be an event in addition to those specified therein, enabling  
21 the Commissioner of Motor Vehicles to require proof of financial  
22 responsibility under 23 V.S.A. chapter 11.

1 ~~Sec. 3. 33 V.S.A. § 5203 is amended to read:~~

2 ~~§ 5203. TRANSFER FROM OTHER COURTS~~

3 ~~(a) If it appears to a Criminal Division of the Superior Court that the~~  
4 ~~defendant was under the age of 16 years at the time the offense charged was~~  
5 ~~alleged to have been committed and the offense charged is not one of those~~  
6 ~~specified in subsection 5204(a) of this title, that Court shall forthwith transfer~~  
7 ~~the case to the Family Division of the Superior Court under the authority of~~  
8 ~~this chapter.~~

9 ~~(b) If it appears to a Criminal Division of the Superior Court that the~~  
10 ~~defendant was over the age of 16 years and under the age of 18 years at the~~  
11 ~~time the offense charged was alleged to have been committed, or that the~~  
12 ~~defendant had attained the age of 14 but not the age of 16 at the time an~~  
13 ~~offense specified in subsection 5204(a) of this title was alleged to have been~~  
14 ~~committed, that Court may forthwith transfer the proceeding to the Family~~  
15 ~~Division of the Superior Court under the authority of this chapter, and the~~  
16 ~~minor shall thereupon be considered to be subject to this chapter as a child~~  
17 ~~charged with a delinquent act.~~

18 ~~(c) If it appears to the State's Attorney that the defendant was over the age~~  
19 ~~of 16 and under the age of 18 at the time the offense charged was alleged to~~  
20 ~~have been committed and the offense charged is not an offense specified in~~  
21 ~~subsection 5204(a) of this title, the State's Attorney may file charges in the~~  
22 ~~Family or Criminal Division of the Superior Court. If charges in such a matter~~

1 ~~are filed in the Criminal Division of the Superior Court, the Criminal Division~~  
2 ~~of the Superior Court may forthwith transfer the proceeding to the Family~~  
3 ~~Division of the Superior Court under the authority of this chapter, and the~~  
4 ~~person shall thereupon be considered to be subject to this chapter as a child~~  
5 ~~charged with a delinquent act.~~

6 ~~(d) Any such transfer shall include a transfer and delivery of a copy of the~~  
7 ~~accusatory pleading and other papers, documents, and transcripts of testimony~~  
8 ~~relating to the case. Upon any such transfer, that court shall order that the~~  
9 ~~defendant be taken forthwith to a place of detention designated by the Family~~  
10 ~~Division of the Superior Court or to that court itself, or shall release the child~~  
11 ~~to the custody of his or her parent or guardian or other person legally~~  
12 ~~responsible for the child, to be brought before the Family Division of the~~  
13 ~~Superior Court at a time designated by that court. The Family Division of the~~  
14 ~~Superior Court shall then proceed as provided in this chapter as if a petition~~  
15 ~~alleging delinquency had been filed with the court under section 5223 of this~~  
16 ~~title on the effective date of such transfer.~~

17 ~~(e) Motions to transfer a case to the Family Division of the Superior Court~~  
18 ~~for youthful offender treatment shall be made under section 5281 of this title.~~

19 [Repealed.]

1 ~~Sec. 4. 33 V.S.A. § 5204 is amended to read:~~

2 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR  
3 COURT

4 (a) After a petition has been filed alleging delinquency, upon motion of the  
5 State's Attorney and after hearing, the Family Division of the Superior Court  
6 may transfer jurisdiction of the proceeding to the Criminal Division of the  
7 Superior Court, if:

8 ~~(1) the child had attained the age of 16 years of age but not the age of~~  
9 ~~18 years of age at the time the act was alleged to have occurred and the~~  
10 ~~delinquent act set forth in the petition was not one of those specified in~~  
11 ~~subdivisions (1) (12) of this subsection; or~~

12 ~~(2) if the child had attained the age of 10 years of age but not the age of~~  
13 ~~14 16 years of age at the time the act was alleged to have occurred; and if the~~  
14 ~~delinquent act set forth in the petition was any of the following:~~

15 ~~(1)(A) arson causing death as defined in 13 V.S.A. § 501;~~

16 ~~(2)(B) assault and robbery with a dangerous weapon as defined in~~  
17 ~~13 V.S.A. § 608(b);~~

18 ~~(3)(C) assault and robbery causing bodily injury as defined in~~  
19 ~~13 V.S.A. 608(c);~~

20 ~~(4)(D) aggravated assault as defined in 13 V.S.A. § 1024;~~

21 ~~(5)(E) murder as defined in 13 V.S.A. § 2301;~~

22 ~~(6)(F) manslaughter as defined in 13 V.S.A. § 2304;~~

1 ~~(7)(G)~~ kidnapping as defined in 13 V.S.A. § 2405,  
2 ~~(8)(H)~~ unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;  
3 ~~(9)(I)~~ maiming as defined in 13 V.S.A. § 2701;  
4 ~~(10)(J)~~ sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);  
5 ~~(11)(K)~~ aggravated sexual assault as defined in 13 V.S.A. § 3253; or  
6 ~~(12)(L)~~ burglary into an occupied dwelling as defined in 13 V.S.A.  
7 § 1201(c).

8 (b) The State's Attorney of the county where the juvenile petition is  
9 pending may move in the Family Division of the Superior Court for an order  
10 transferring jurisdiction under subsection (a) of this section at any time prior to  
11 adjudication on the merits. The filing of the motion to transfer jurisdiction  
12 shall automatically stay the time for the hearing provided for in section 5225 of  
13 this title, which stay shall remain in effect until such time as the Family  
14 Division of the Superior Court may deny the motion to transfer jurisdiction.

15 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)  
16 of this section, the Family Division of the Superior Court shall conduct a  
17 hearing in accordance with procedures specified in subchapter 2 of this chapter  
18 to determine whether:

19 (1) there is probable cause to believe that the child committed an act  
20 listed in subsection (a) of this section; and

1 ~~(2) public safety and the interests of the community would not be served~~

2 by treatment of the child under the provisions of law relating to the Family  
3 Division of the Superior Court and delinquent children.

4 (d) In making its determination as required under subsection (c) of this  
5 section, the Court may consider, among other matters:

6 (1) ~~The~~ the maturity of the child as determined by consideration of his  
7 or her age, home, environment; emotional, psychological and physical  
8 maturity; and relationship with and adjustment to school and the community;

9 (2) ~~The~~ the extent and nature of the child's prior record of delinquency;

10 (3) ~~The~~ the nature of past treatment efforts and the nature of the child's  
11 response to them;

12 (4) ~~Whether~~ whether the alleged offense was committed in an  
13 aggressive, violent, premeditated, or willful manner;

14 (5) ~~The~~ the nature of any personal injuries resulting from or intended to  
15 be caused by the alleged act;

16 (6) ~~The~~ the prospects for rehabilitation of the child by use of procedures,  
17 services, and facilities available through juvenile proceedings; and

18 (7) ~~Whether~~ whether the protection of the community would be better  
19 served by transferring jurisdiction from the Family Division to the Criminal  
20 Division of the Superior Court.

21 (e) A transfer under this section shall terminate the jurisdiction of the  
22 Family Division of the Superior Court over the child only with respect to those

1 ~~delinquent acts alleged in the petition with respect to which transfer was~~  
2 ~~sought.~~

3 (f)(1) The Family Division, following completion of the transfer hearing,  
4 shall make findings and, if the Court orders transfer of jurisdiction from the  
5 Family Division, shall state the reasons for that order. If the Family Division  
6 orders transfer of jurisdiction, the child shall be treated as an adult. The State's  
7 Attorney shall commence criminal proceedings as in cases commenced  
8 against adults.

9 (2) Notwithstanding subdivision (1) of this subsection, the parties may  
10 stipulate to a transfer of jurisdiction from the Family Division at any time after  
11 a motion to transfer is made pursuant to subsection (b) of this section. The  
12 Court shall not be required to make findings if the parties stipulate to a transfer  
13 pursuant to this subdivision. Upon acceptance of the stipulation to transfer  
14 jurisdiction, the Court shall transfer the proceedings to the Criminal Division  
15 and the child shall be treated as an adult. The State's Attorney shall commence  
16 criminal proceedings as in cases commenced against adults.

17 (g) The order granting or denying transfer of jurisdiction shall not  
18 constitute a final judgment or order within the meaning of Rules 3 and 4 of the  
19 Vermont Rules of Appellate Procedure.

20 (h) If a person who has not attained ~~the age of 16 years of age~~ at the time of  
21 the alleged offense has been prosecuted as an adult and is not convicted of one  
22 of the acts listed in subsection (a) of this section but is convicted only of one or

1 ~~more lesser offenses, jurisdiction shall be transferred to the Family Division of~~  
2 the Superior Court for disposition. A conviction under this subsection shall be  
3 considered an adjudication of delinquency and not a conviction of crime, and  
4 the entire matter shall be treated as if it had remained in the Family Division  
5 throughout. In case of an acquittal for a matter specified in this subsection and  
6 in case of a transfer to the Family Division under this subsection, the Court  
7 shall order the sealing of all applicable files and records of the Court, and such  
8 order shall be carried out as provided in subsection 5119(e) of this title.

9 (i) The record of a hearing conducted under subsection (c) of this section  
10 and any related files shall be open to inspection only by persons specified in  
11 subsections 5117(b) and (c) of this title in accordance with section 5119 of this  
12 title and by the attorney for the child.

13 Sec. 5. 33 V.S.A. § 5281 is amended to read:

14 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

15 (a) ~~A~~ After transfer of a proceeding pursuant to section 5204 of this title, a  
16 motion may be filed in the Criminal Division of the Superior Court requesting  
17 that a defendant under 18 years of age in a criminal proceeding who had  
18 ~~attained the age of 10 years of age but not the age of 18 years of age~~ attained the age of 10 years of age at the time  
19 the offense is alleged to have been committed be treated as a youthful offender.  
20 The motion may be filed by the State's Attorney, the defendant, or the Court  
21 on its own motion.

22 \* \* \*

1 ~~Sec. 6. EFFECTIVE DATE~~

2 This act shall take effect on passage.

*Sec. 1. 33 V.S.A. § 5206 is added to read:*

§ 5206. CITATION OF 16- AND 17-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under 18 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State's Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State's Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) A listed crime as defined in 13 V.S.A. § 5301.

(4) An offense listed in subsection 5204(a) of this title.

*Sec. 2. REPORT*

*(a) On or before March 1, 2016, each State's Attorney shall adopt a written protocol regarding his or her approach to deciding whether to file a delinquency petition or criminal charges against a child that reflects the purposes of 33V.S.A. § 5101.*

*(b) On or before April 1, 2016, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the House and Senate Committees on Judiciary regarding State's Attorneys' implementation of subsection (a) of this section.*

*Sec. 3. 33 V.S.A. § 5234 is amended to read:*

*§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS  
INVOLVING A LISTED CRIME*

*(a) The victim in a delinquency proceeding involving a listed crime shall have the following rights:*

*(1) To be notified by the prosecutor's office in a timely manner;*

*(A) when a delinquency petition has been filed, the name of the child, and any conditions of release ordered for the child that are materially related to the victim or intended to protect the safety of the victim;*

*(B) his or her rights as provided by law, information regarding how a case proceeds through a delinquency proceeding, the confidential nature of delinquency proceedings, and that it is unlawful to disclose confidential information concerning the proceedings to another person;*

*(C) when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled; and*

*~~(2)(D) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including any conditions ~~of~~ of release that are materially related to the victim or intended to protect the safety of the victim and restitution relevant to the victim, when ordered.~~*

*~~(3)(2) To attend the disposition hearing and to present a victim's impact statement, including a statement why restitution may be appropriate, at the disposition hearing in accordance with subsection 5233(b) of this title and to be notified as to the disposition pursuant to subsection 5233(d) of this title.~~  
The Court shall consider the victim's statement when ordering disposition.*

*~~(4)(3) Upon request, to~~ To be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.*

~~(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title. [Repealed.]~~

~~(6) To be notified by the Court of the victim's rights under this section. [Repealed.]~~

~~(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.~~

Sec. 4. 33 V.S.A. § 5234a is added to read:

§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A NONLISTED CRIME

The victim in a delinquency proceeding based on an act that is not a listed crime shall have the following rights:

(1) To be notified by the Court of his or her rights as provided by law and his or her responsibilities regarding the confidential nature of juvenile proceedings.

(2) To be notified promptly by the Court when conditions of release are initially ordered or modified by the Court and shall be notified promptly of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. Victims are entitled only to information contained in the conditions of release that pertain to the victim or a member of the victim's family or current household.

(3) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution.

(4) To be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution if the Court finds the victim's presence at the disposition hearing is in the best interests of the child and the victim.

(5) To have the Court take a victim's views into consideration in the Court's disposition order.

(6) To be allowed not to be personally present at any portion of the disposition hearing except to present the impact statement unless authorized by the Court.

(7) To be informed by the Court after an adjudication of delinquency has been made of the disposition of the case. Upon request of the victim, the Court may release to the victim the identity of the child if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim. Disposition in the case shall include whether the child was placed on probation and information regarding conditions of probation relevant to the victim.

*Sec. 5. REPEAL*

33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim's statement at disposition) are repealed.

*Sec. 6. EFFECTIVE DATES*

(a) This section and Sec. 2 of this act shall take effect on passage.

(b) The remaining sections of this act shall take effect on July 1, 2016.