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H.55

Introduced by Representatives Grad of Moretown, Colburn of Burlington,  
Conquest of Newbury, Morris of Bennington, and Rachelson of  
Burlington

Referred to Committee on

Date:

Subject: Criminal procedure; public defenders; right to representation; persons  
at or under 25 years of age

Statement of purpose of bill as introduced: This bill proposes to require that a  
public defender be appointed for any criminal or juvenile offense committed  
by a person 25 years of age or less who meets the financial criteria for  
appointment of counsel.

An act relating to appointing public defenders for accused persons 25 years  
of age or less

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

Sec. 1. 13 V.S.A. § 5231 is amended to read:

§ 5231. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES

(a) A needy person who is being detained by a law enforcement officer  
without charge or judicial process, ~~or~~ who is charged with having committed  
or is being detained under a conviction of a serious crime, or who is charged

1 with having committed or is being detained under a conviction of any criminal  
2 offense if the person was 25 years of age or less at the time the alleged offense  
3 was committed, is entitled:

4 (1) To be represented by an attorney to the same extent as a person  
5 having his or her own counsel; ~~and~~.

6 (2) To be provided with the necessary services and facilities of  
7 representation. Any such necessary services and facilities of representation  
8 that exceed \$1,500.00 per item must receive prior approval from the court  
9 after a hearing involving the parties. The court may conduct the hearing  
10 outside the presence of the ~~state~~ State, but only to the extent necessary to  
11 preserve privileged or confidential information. This obligation and  
12 requirement to obtain prior court approval shall also be imposed in like  
13 manner upon the ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's  
14 Attorney prosecuting a violation of the law.

15 (b) The attorney, services and facilities, and court costs shall be provided at  
16 public expense to the extent that the person, at the time the court determines  
17 need, is unable to provide for the person's payment without undue hardship.

18 Sec. 2. 13 V.S.A. § 5232 is amended to read:

19 § 5232. PARTICULAR PROCEEDINGS

20 Counsel shall be assigned under section 5231 of this title to represent needy  
21 persons in any of the following:

22 \* \* \*

1           (3) ~~Proceedings~~ For proceedings arising out of a petition brought in a  
2 juvenile court, including any subsequent proceedings arising from an order  
3 issued in the juvenile proceeding:

4                   (A) the child; and

5                   (B) when the court deems the interests of justice require  
6 representation, of either the child or his or her the child's parents or guardian,  
7 or both, including any subsequent proceedings arising from an order therein.

8           Sec. 3. 13 V.S.A. § 5234 is amended to read:

9           § 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

10           (a) If a person who is being detained by a law enforcement officer without  
11 charge or judicial process, ~~or~~ who is charged with having committed or is  
12 being detained under a conviction of a serious crime, or who is charged with  
13 having committed or is being detained under a conviction of any criminal  
14 offense if the person was 25 years of age or less at the time the alleged offense  
15 was committed, is not represented by an attorney under conditions in which a  
16 person having his or her own counsel would be entitled to be so represented,  
17 the law enforcement officer, magistrate, or court concerned shall:

18                   (1) Clearly inform him or her of the right of a person to be represented  
19 by an attorney and of a needy person to be represented at public expense; ~~and~~

20                   (2) If the person detained or charged does not have an attorney and does  
21 not knowingly, voluntarily and intelligently waive his or her right to have an  
22 attorney when detained or charged, notify the appropriate public defender that

1 he or she is not so represented. This shall be done upon commencement of  
2 detention, formal charge, or post-conviction proceeding, as the case may be.  
3 As used in this subsection, the term “commencement of detention” includes  
4 the taking into custody of a probationer or parolee.

5 (b) Upon commencement of any later judicial proceeding relating to the  
6 same matter, the presiding officer shall clearly inform the person so detained  
7 or charged of the right of a needy person to be represented by an attorney at  
8 public expense.

9 (c) Information given to a person by a law enforcement officer under this  
10 section is effective only if it is communicated to a person in a manner meeting  
11 standards under the ~~constitution~~ Constitution of the United States relating to  
12 admissibility in evidence against him or her of statements of a detained person.

13 (d) Information meeting the standards of subsection (c) of this section and  
14 given to a person by a law enforcement officer under this section gives rise to  
15 a rebuttable presumption that the information was effectively communicated  
16 if:

17 (1) ~~It~~ it is in writing or otherwise recorded;

18 (2) ~~The~~ the recipient records his or her acknowledgment of receipt and  
19 time of receipt of the information; and

20 (3) ~~The~~ the material so recorded under subdivisions (1) and (2) of this  
21 subsection is filed with the court next concerned.

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on July 1, 2017.