

House Proposal of Amendment

S. 4

An act relating to reducing crimes of violence associated with juveniles and dangerous weapons

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court if the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(1) arson causing death as defined in 13 V.S.A. § 501 or an attempt to commit that offense;

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b) or an attempt to commit that offense;

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c) or an attempt to commit that offense;

(4) aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to commit that offense;

(5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;

(6) manslaughter as defined in 13 V.S.A. § 2304 or an attempt to commit that offense;

(7) kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit that offense;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an attempt to commit that offense;

(9) maiming as defined in 13 V.S.A. § 2701 or an attempt to commit that offense;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an attempt to commit that offense;

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an attempt to commit either of those offenses; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c) or an attempt to commit that offense.

(b)(1) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(2)(A)(i) The Family Division of the Superior Court shall hold a hearing under subsection (c) of this section to determine whether jurisdiction should be transferred to the Criminal Division under subsection (a) of this section if the delinquent act set forth in the petition is:

(I) a felony violation of 18 V.S.A. chapter 84 for selling or trafficking a regulated drug;

(II) human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653;

(III) defacing a firearm's serial number in violation of 13 V.S.A. § 4024; or

(IV) straw purchasing of firearm in violation of 13 V.S.A. § 4025; and

(ii) the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred.

(B) A transfer hearing required by this subdivision (2) shall occur without delay and as soon as practicable, and the State shall have the burden of proof. The court decision to hold the transfer hearing shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under ~~subsection (b)~~ subdivision (b)(1) of this section, or in cases where a hearing is required under subdivision (b)(2) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

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

(1) the maturity of the child as determined by consideration of the child's age, home, and environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

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

(3) the nature of past treatment efforts and the nature of the child's response to them, including the child's mental health treatment and substance abuse treatment and needs;

(4) the nature and circumstances of the alleged offense, including whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

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

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

(7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court;

(8) the youth's residential housing status;

(9) the youth's employment and educational situation;

(10) whether the youth has complied with conditions of release;

(11) the youth's criminal record and whether the youth has engaged in subsequent criminal or delinquent behavior since the original charge;

(12) whether the youth has connections to the community; and

(13) the youth's history of violence and history of illegal or violent conduct involving firearms.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

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

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

(3) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to convert the juvenile proceeding to a youthful offender proceeding under chapter 52A of this title. If the parties stipulate to convert the proceeding pursuant to this subdivision, the court may proceed immediately to a youthful offender consideration hearing under section 5283 of this title. The Court shall request that the Department complete a youthful offender consideration report under section 5282 of this title before accepting a case for youthful offender treatment pursuant to this subdivision.

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Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

(c)(1) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) 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.

(2)(A) Any proceeding concerning a child who is alleged to have committed one of the following acts 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:

(i) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for any of the offenses listed in subsection 5204(a) of this title; or

(ii) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for an offense that was transferred from the Family Division pursuant to section 5204 of this title.

(B) This subdivision (2) shall not apply to a proceeding that is the subject of a final order accepting the case for youthful offender treatment pursuant to subsection 5281(d) of this title.

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Sec. 3. 18 V.S.A. § 4252 is amended to read:

§ 4252. ~~PENALTIES FOR DISPENSING OR SELLING~~ KNOWINGLY
PERMITTING SALE OF REGULATED DRUGS
IN A DWELLING

(a) No person shall knowingly permit a dwelling, building, or structure owned by or under the control of the person to be used for the purpose of illegally ~~dispensing or selling~~ a regulated drug.

~~(b) A landlord shall be in violation of subsection (a) of this section only if the landlord knew at the time he or she signed the lease agreement that the tenant intended to use the dwelling, building, or structure for the purpose of illegally dispensing or selling a regulated drug. [Repealed.]~~

(c) A person who violates this section shall be imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$15,000.00, or both.

(d) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity.

Sec. 4. 13 V.S.A. chapter 60, subchapter 1, is amended to read:

Subchapter 1. Criminal Acts

* * *

§ 2659. KNOWINGLY PERMITTING HUMAN TRAFFICKING IN A
DWELLING

(a) No person shall knowingly permit a dwelling, building, or structure owned by or under the control of the person to be used for the purpose of human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$15,000.00, or both.

(c) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity.

Sec. 5. 13 V.S.A. § 4024 is added to read:

§ 4024. DEFACING OF FIREARM'S SERIAL NUMBER

(a) A person shall not knowingly possess a firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(c) As used in this section:

(1) "Firearm" has the same meaning as in section 4017 of this title.

(2) "Importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

(3) "Manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution.

Sec. 6. 13 V.S.A. § 4025 is added to read:

§ 4025. STRAW PURCHASING OF FIREARMS

(a) A person shall not purchase a firearm for, on behalf of, or at the request of another person if the purchaser knows or reasonably should know that the other person:

(1) is prohibited by state or federal law from possessing a firearm;

(2) intends to carry the firearm while committing a felony; or

(3) intends to transfer the firearm to another person who:

(A) is prohibited by state or federal law from possessing a firearm; or

(B) intends to carry the firearm while committing a felony.

(b) It shall not be a violation of this section if the person purchased the firearm as a result of threats or coercion by another person.

(c) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(d) As used in this section, "firearm" has the same meaning as in section 4017 of this title.

Sec. 7. 13 V.S.A. § 4017a is added to read:

§ 4017a. FUGITIVES FROM JUSTICE; PERSONS SUBJECT TO FINAL RELIEF FROM ABUSE OR STALKING ORDER; PERSONS CHARGED WITH CERTAIN OFFENSES; PROHIBITION ON POSSESSION OF FIREARMS

(a) A person shall not possess a firearm if the person:

(1) is a fugitive from justice;

(2) is the subject of a final relief from abuse order issued pursuant to 15 V.S.A. § 1104;

(3) is the subject of a final order against stalking issued pursuant to 12 V.S.A. § 5133 if the order prohibits the person from possessing a firearm;
or

(4) against whom charges are pending for:

(A) carrying a dangerous weapon while committing a felony in violation of section 4005 of this title;

(B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1; or

(C) human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(c) As used in this section:

(1) “Firearm” has the same meaning as in section 4017 of this title.

(2) “Fugitive from justice” means a person who has fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.

Sec. 8. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A ~~CRIME~~ FELONY

(a) Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony shall be imprisoned not more than five years or fined not more than \$500.00, or both.

(b)(1) Carrying a firearm while committing a felony in violation of this section may be considered a violent act for the purposes of determining whether a person is eligible for bail under section 7553a of this title.

(2) An offense that is a felony rather than a misdemeanor solely because of the monetary value of the property involved shall not be considered a violent act under this subsection.

Sec. 9. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

* * *

(d) Such records and files shall be available to:

(1) State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes; and

(2) the National Instant Criminal Background Check System in connection with a background check conducted on a person under 22 years of age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

* * *

Sec. 10. 18 V.S.A. § 13 is added to read:

§ 13. COMMUNITY VIOLENCE PREVENTION PROGRAM

(a)(1) There is established the Community Violence Prevention Program to be administered by the Department of Health in consultation and collaboration with the Chief Prevention Officer, the Department of Public Safety, the Director of Violence Prevention, the Executive Director of Racial Equity, and the Council for Equitable Youth Justice. The Program shall work with communities to implement innovative, evidence-based, and evidence-informed programs addressing causes of youth and community violence.

(2) Grants awarded pursuant to this section shall be at the discretion of the Commissioner of Health. Preference shall be given to communities where there has been an increase in violence associated with illegal drug sales and trafficking, gang activity, or human trafficking. Grants shall:

(A) build on and complement existing programs addressing the causes of youth and community violence; and

(B) be for the purpose of funding efforts that address violence and associated community harm using approaches that may include the following:

(i) best available research evidence;

(ii) experiential evidence;

(iii) contextual evidence;

(iv) lived experience of impacted communities;

(v) trauma-responsive programming; and

(vi) other qualitative or quantitative factors that may inform the decision-making of the Commissioner.

(b)(1) A Vermont municipality or nonprofit organization may submit an application for a Community Violence Prevention Program grant to the Commissioner of Health. Grants awarded under this section shall be for the purpose of funding innovative, evidence-based, or evidence-informed approaches to reducing violence and associated community harm.

(2) The Commissioner of Health, in consultation with the Department of Public Safety and the Executive Director of Racial Equity, shall develop and publish guidelines for the award of Community Violence Prevention Program grants. The guidelines shall include a focus on increasing community capacity to implement approaches for human services, public health, and public safety collaboration to address root causes of community violence and substance use through data-driven projects.

(c) The Community Violence Prevention Program shall collect data to monitor youth and community violence and its related risk and protective factors and to evaluate the impact of prevention efforts and shall use the data to plan and implement programs. The Program shall use monitoring and evaluation data to track the impact of interventions.

(d)(1) The Commissioner of Health, in consultation and collaboration with the Chief Prevention Officer, the Department of Public Safety, the Director of Violence Prevention, the Executive Director of Racial Equity, and the Council for Equitable Youth Justice, shall report on the Community Violence Prevention Program:

(A) on or before September 1, 2023 and December 1, 2023 to the Joint Legislative Justice Oversight Committee; and

(B) on or before January 15, 2024, and annually on that date thereafter, to the Senate and House Committees on Judiciary, the Senate

Committee on Health and Welfare, the House Committee on Human Services, and the House Committee on Health Care.

(2) The report required by this subsection shall include:

(A) a complete description of the Community Violence Prevention Program grant application and award process;

(B) guidelines for the award of grants developed under subdivision (b)(2) of this section;

(C) the number of applications submitted and grants awarded, and the amount of each grant awarded;

(D) detailed descriptions of the programs and purposes for which all grants were awarded;

(E) the impacts and outcomes of funded projects; and

(F) descriptions of any grants applied for or awarded.

Sec. 11. APPROPRIATION

(a) Grants awarded from State funds to the Community Violence Prevention Program established by 18 V.S.A. § 13 shall be dependent upon the amount of the appropriation.

(b) The Department of Health is authorized to seek and accept grant funding for the purpose of supporting the Community Violence Prevention Program to supplement State appropriations.

(c) If funding is available for the Community Violence Prevention Program from federal grants or legal settlements related to drug use or criminal activity:

(1) such federal or settlement funds shall be utilized first for the Program; and

(2) an amount of the General Fund appropriation made under subsection (a) of this section equal to the total amount of federal grants or legal settlements received by the Program shall be reverted to the General Fund.

Sec. 12. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts and Resolves No. 160, Sec. 1, is further amended to read:

Sec. 21. EFFECTIVE DATES

* * *

(d) Secs. 17–19 shall take effect on July 1, 2023 2024.

Sec. 13. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts and Resolves No. 160, Sec. 2, is further amended to read:

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, ~~2023~~ 2024.

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Sec. 14. PLAN FOR SECURE PLACEMENTS

On or before September 1, 2023 and December 1, 2023, the Department for Children and Families shall file a status report to the Joint Legislative Justice Oversight Committee, the Senate and House Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Human Services, and the Senate Committee on Health and Welfare describing the progress made toward implementing the requirement of Secs. 12 and 13 of this act that the Raise the Age initiative take effect on July 1, 2024.

Sec. 15. SENTENCING COMMISSION REPORT

(a) On or before December 15, 2023, the Vermont Sentencing Commission shall report 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 to include:

(1) first degree arson as defined in 13 V.S.A. § 502 or second degree arson as defined in 13 V.S.A. § 503;

(2) stalking as defined in 13 V.S.A. § 1062;

(3) 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;

(4) selling or dispensing a regulated drug with death resulting as defined in 18 V.S.A. § 4250;

(5) using a firearm while selling or dispensing a drug as defined in 18 V.S.A. § 4253;

(6) carrying a dangerous or deadly weapon while committing a felony as defined in 13 V.S.A. § 4005;

(7) lewd or lascivious conduct as defined in 13 V.S.A. § 2601 or lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(8) eluding a police officer with serious bodily injury or death resulting as defined in 23 V.S.A. § 1133(b);

(9) willful and malicious injuries caused by explosives as defined in 13 V.S.A. § 1601, injuries caused by destructive devices as defined in 13 V.S.A. § 1605, or injuries caused by explosives as defined in 13 V.S.A. § 1608;

(10) grand larceny as defined in 13 V.S.A. § 2501 or larceny from the person as defined in 13 V.S.A. § 2503;

(11) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(12) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(13) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);

(14) a hate-motivated crime as defined in 13 V.S.A. § 1455;

(15) conspiracy as defined in 13 V.S.A. § 1404;

(16) a violation of an abuse prevention order as defined in 13 V.S.A. § 1030 or violation of an order against stalking or sexual assault as defined in 12 V.S.A. § 5138;

(17) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1;

(18) human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653; or

(19) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3).

(b) The report required by this section shall also consider whether burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c) should continue to be included in the offenses for which transfer from the Family Division to the Criminal Division is permitted under 33 V.S.A. § 5204(a) or whether an alternate or redefined version of the offense should be included.

Sec. 16. SEVERABILITY

As set forth in 1 V.S.A. § 215, the provisions of this act are severable, and if a court finds any provision of this act to be invalid, or if any application of this act to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 17. EFFECTIVE DATE

This act shall take effect on passage.