

1 H.137

2 Introduced by Representatives Jewett of Ripton, Donahue of Northfield, Fisher
3 of Lincoln, Geier of S. Burlington, Mrowicki of Putney and
4 Zuckerman of Burlington

5 Referred to Committee on

6 Date:

7 Subject: Juvenile proceedings; commencement of proceedings against minors
8 in family court

9 Statement of purpose: This bill proposes to require that all criminal
10 proceedings against minors be commenced in family court. For serious
11 offenses, the state's attorney may file a motion to transfer the proceedings to
12 district court. The family court may continue its jurisdiction over a minor until
13 the minor reaches the age of 21 if it finds that doing so is in the minor's best
14 interest.

15 An act relating to requiring criminal proceedings against minors to be
16 commenced in family court

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

1 Sec. 1. 33 V.S.A. § 5103 is amended to read:

2 § 5103. JURISDICTION

3 (a) The family court shall have exclusive jurisdiction over all proceedings
4 concerning a child who is or who is alleged to be a delinquent child or a child
5 in need of care or supervision brought under the authority of the juvenile
6 judicial proceedings chapters, except as otherwise provided in such chapters.

7 (b) Orders issued under the authority of the juvenile judicial proceedings
8 chapters shall take precedence over orders in other family court proceedings
9 and any order of another court of this state, to the extent they are inconsistent.
10 This section shall not apply to child support orders in a divorce, parentage, or
11 relief from abuse proceedings until a child support order has been issued in the
12 juvenile proceeding.

13 (c)(1) Except as otherwise provided by this title and by subdivision (2) of
14 this subsection, jurisdiction over a child shall not be extended beyond the
15 child's 18th birthday.

16 (2) The family court may retain jurisdiction over a child adjudicated
17 delinquent up to the age of 21 if the court finds that retaining jurisdiction
18 would be in the best interest of the child.

19 (d) The court may terminate its jurisdiction over a child prior to the child's
20 18th birthday by order of the court. If the child is not subject to another

1 juvenile proceeding, jurisdiction shall terminate automatically in the following
2 circumstances:

3 (1) Upon the discharge of a child from juvenile probation, providing the
4 child is not in the legal custody of the commissioner.

5 (2) Upon an order of the court transferring legal custody to a parent,
6 guardian, or custodian without conditions or protective supervision.

7 (3) Upon the adoption of a child following a termination of parental
8 rights proceeding.

9 Sec. 2. 33 V.S.A. § 5203 is amended to read:

10 § 5203. TRANSFER FROM OTHER COURTS

11 (a) If it appears to a district court that the defendant was under the age of
12 ~~16~~ 18 years at the time the offense charged was alleged to have been
13 committed ~~and the offense charged is not one of those specified in subsection~~
14 ~~5204(a) of this title~~, that court shall forthwith transfer the case to the juvenile
15 court under the authority of this chapter.

16 (b) ~~If it appears to a district court that the defendant was over the age of 16~~
17 ~~years and under the age of 18 years at the time the offense charged was alleged~~
18 ~~to have been committed, or that the defendant had attained the age of 14 but~~
19 ~~not the age of 16 at the time an offense specified in subsection 5204(a) of this~~
20 ~~title was alleged to have been committed, that court may forthwith transfer the~~
21 ~~proceeding to the juvenile court under the authority of this chapter, and the~~

1 ~~minor shall thereupon be considered to be subject to this chapter as a child~~
2 ~~charged with a delinquent act.~~

3 ~~(c) If it appears to the state's attorney that the defendant was over the age~~
4 ~~of 16 and under the age of 18 at the time the offense charged was alleged to~~
5 ~~have been committed and the offense charged is not an offense specified in~~
6 ~~subsection 5204(a) of this title, the state's attorney may file charges in a~~
7 ~~juvenile court or the district court. If charges in such a matter are filed in~~
8 ~~district court, the district court may forthwith transfer the proceeding to the~~
9 ~~juvenile court under the authority of this chapter, and the person shall~~
10 ~~thereupon be considered to be subject to this chapter as a child charged with a~~
11 ~~delinquent act.~~

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

1 ~~(e)~~(c) Motions to transfer a case to family court for youthful offender
2 treatment shall be made under section 5281 of this title.

3 Sec. 3. 33 V.S.A. § 5204 is amended to read:

4 § 5204. TRANSFER FROM JUVENILE COURT

5 (a) After a petition has been filed alleging delinquency, upon motion of the
6 state's attorney and after hearing, the juvenile court may transfer jurisdiction of
7 the proceeding to district court, if the child had attained the age of 10 but not
8 the age of ~~14~~ 18 at the time the act was alleged to have occurred, and if the
9 delinquent act set forth in the petition was any of the following:

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

11 (2) assault and robbery with a dangerous weapon as defined in
12 13 V.S.A. § 608(b);

13 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
14 608(c);

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

16 (5) murder as defined in 13 V.S.A. § 2301;

17 (6) manslaughter as defined in 13 V.S.A. § 2304;

18 (7) kidnapping as defined in 13 V.S.A. § 2405;

19 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

20 (9) maiming as defined in 13 V.S.A. § 2701;

21 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

1 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

2 (12) burglary into an occupied dwelling as defined in 13 V.S.A.

3 § 1201(c).

4 (b) The state's attorney of the county where the juvenile petition is pending
5 may move in the juvenile court for an order transferring jurisdiction under
6 subsection (a) of this section within 10 days of the filing of the petition
7 alleging delinquency. The filing of the motion to transfer jurisdiction shall
8 automatically stay the time for the hearing provided for in section 5225 of this
9 title, which stay shall remain in effect until such time as the juvenile court may
10 deny the motion to transfer jurisdiction.

11 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)
12 of this section, the juvenile court shall conduct a hearing in accordance with
13 procedures specified in subchapter 2 of this chapter to determine whether:

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

16 (2) public safety and the interests of the community would not be served
17 by treatment of the child under the provisions of law relating to juvenile courts
18 and delinquent children.

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

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

4 (2) The extent and nature of the child's prior record of delinquency.

5 (3) The nature of past treatment efforts and the nature of the child's
6 response to them.

7 (4) Whether the alleged offense was committed in an aggressive,
8 violent, premeditated, or willful manner.

9 (5) The nature of any personal injuries resulting from or intended to be
10 caused by the alleged act.

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

13 (7) Whether the protection of the community would be better served by
14 transferring jurisdiction from the juvenile court to the district court.

15 (e) A transfer under this section shall terminate the jurisdiction of the
16 juvenile court over the child only with respect to those delinquent acts alleged
17 in the petition with respect to which transfer was sought.

18 (f) The juvenile court, following completion of the transfer hearing, shall
19 make written findings and, if the court orders transfer of jurisdiction from the
20 juvenile court, shall state the reasons for that order. If the juvenile court orders
21 transfer of jurisdiction, the child shall be treated as an adult. The state's

1 attorney shall commence criminal proceedings as in cases commenced against
2 adults.

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

6 (h) If a person who has not attained the age of ~~16~~ 18 at the time of the
7 alleged offense has been prosecuted as an adult and is not convicted of one of
8 the acts listed in subsection (a) of this section but is convicted only of one or
9 more lesser offenses, jurisdiction shall be transferred to the juvenile court for
10 disposition. A conviction under this subsection shall be considered an
11 adjudication of delinquency and not a conviction of crime, and the entire
12 matter shall be treated as if it had remained in juvenile court throughout. In
13 case of an acquittal for a matter specified in this subsection and in case of a
14 transfer to juvenile court under this subsection, the court shall order the sealing
15 of all applicable files and records of the court, and such order shall be carried
16 out as provided in subsection 5119(e) of this title.

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