

1 H.618

2 Introduced by Representatives Wizowaty of Burlington, Grad of Moretown,

3 and Waite-Simpson of Essex

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 exclusive jurisdiction over the proceedings and permits the Family Division to
12 extend jurisdiction over the child until he or she reaches 21 years of age.

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

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

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

17 § 5103. JURISDICTION

18 (a) The Family Division of the Superior Court shall have exclusive
19 jurisdiction over all proceedings concerning a child who is or who is alleged to
20 be a delinquent child or a child in need of care or supervision brought under

1 ~~the authority of the juvenile judicial proceedings chapters, except as otherwise~~
2 ~~provided in such chapters.~~

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

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

12 (2)(A) Jurisdiction over a child who has been adjudicated delinquent
13 may be extended until ~~six months beyond the child's 18th~~ 21st birthday if the
14 ~~offense for which the child has been adjudicated delinquent is a nonviolent~~
15 ~~misdemeanor and the child was 17 years old when he or she committed the~~
16 ~~offense~~ Court finds that doing so would be in the best interests of the child and
17 public safety.

18 (B) In no case shall custody of a child ~~aged~~ 18 years of age or older
19 be retained by or transferred to the Commissioner for Children and Families.

20 (C) Jurisdiction over a child in need of care or supervision shall not
21 be extended beyond the child's 18th birthday.

1 ~~(D) As used in this subdivision, “nonviolent misdemeanor” means a~~
2 ~~misdemeanor offense which is not a listed crime as defined in 13 V.S.A.~~
3 ~~§ 5301(7), an offense involving sexual exploitation of children in violation of~~
4 ~~13 V.S.A. chapter 64, or an offense involving violation of a protection order in~~
5 ~~violation of 13 V.S.A. § 1030. [Repealed.]~~

6 (d) The Court may terminate its jurisdiction over a child prior to the child’s
7 18th birthday by order of the Court. If the child is not subject to another
8 juvenile proceeding, jurisdiction shall terminate automatically in the following
9 circumstances:

10 (1) ~~Upon~~ upon the discharge of a child from juvenile probation,
11 providing the child is not in the legal custody of the Commissioner;

12 (2) ~~Upon~~ upon an order of the Court transferring legal custody to a
13 parent, guardian, or custodian without conditions or protective supervision; or

14 (3) ~~Upon~~ upon the adoption of a child following a termination of
15 parental rights proceeding.

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

17 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

18 (a) All delinquency proceedings under this chapter shall be in the Family
19 Division of the Superior Court. Proceedings under this chapter shall be
20 commenced by:

1 ~~(1) transfer to the Court of a proceeding from another court Family~~
2 ~~Division as provided 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 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 State's Attorney shall~~
7 ~~provide to the Court the name and address of the child's custodial parent,~~
8 ~~guardian, or custodian and the name and address of any noncustodial parent if~~
9 ~~known.~~

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

15 * * *

16 Sec. 3. 33 V.S.A. § 5202(a)(2) is amended to read:

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

1 ~~the Commissioner of Motor Vehicles to require proof of financial~~
2 ~~responsibility under 23 V.S.A. chapter 11.~~

3 Sec. 4. 33 V.S.A. § 5203 is amended to read:

4 § 5203. TRANSFER FROM OTHER COURTS

5 (a) If it appears to a Criminal Division of the Superior Court that the
6 defendant was under ~~the age of 16~~ 18 years of age at the time the offense
7 charged was alleged to have been committed ~~and the offense charged is not~~
8 ~~one of those specified in subsection 5204(a) of this title~~, that Court shall
9 forthwith transfer the case to the Family Division of the Superior Court under
10 the authority of this chapter.

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

20 (c) ~~If it appears to the state's attorney that the defendant was over the age~~
21 ~~of 16 and under the age of 18 at the time the offense charged was alleged to~~

1 ~~have been committed and the offense charged is not an offense specified in~~
2 ~~subsection 5204(a) of this title, the state's attorney may file charges in the~~
3 ~~Family or Criminal Division of the Superior Court. If charges in such a matter~~
4 ~~are filed in the Criminal Division of the Superior Court, the Criminal Division~~
5 ~~of the Superior Court may forthwith transfer the proceeding to the Family~~
6 ~~Division of the Superior Court under the authority of this chapter, and the~~
7 ~~person shall thereupon be considered to be subject to this chapter as a child~~
8 ~~charged with a delinquent act.~~

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

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

1 ~~Sec. 5. REPEALS~~
2 ~~33 V.S.A. §§ 5104 (Retention of jurisdiction over youthful offenders), 5204~~
3 ~~(Transfer from Family Division of the Superior Court) and 5281–88 (all~~
4 ~~relating to youthful offenders) are repealed.~~
5 Sec. 6. EFFECTIVE DATE
6 ~~This act shall take effect on passage.~~

Sec. 1. REPORT; PROTOCOLS FOR CHARGING ARRESTED MINORS

On or before January 1, 2015, the Department of Sheriffs and State's Attorneys shall report to the House and Senate Committees on Judiciary regarding the treatment of arrested minors under 18 years of age. The report shall include written protocols for use by the Vermont State's Attorneys describing under what circumstances, according to which criteria, and for what types of offenses minors under 18 years of age are:

(1) charged as juveniles in the Family Division or as adults in the Criminal Division;

(2) treated as youthful offenders; and

(3) transferred between the Family and Criminal Divisions.

Sec. 2. COURT ADMINISTRATOR; NOTICE OF RIGHT TO TRANSFER;

FORM

(a) The Court Administrator shall develop a form that informs a minor charged with a criminal offense in the Criminal Division that:

(1) there may be collateral consequences that result from pleading guilty to a criminal offense in the Criminal Division; and

(2) the minor has the right to request that the charges against him or her be transferred from the Criminal Division to the Family Division pursuant to 33 V.S.A. chapter 52 (Delinquency Proceedings).

(b) The Court Administrator shall ensure that the form developed pursuant to subsection (a) of this section is provided to all persons under 18 years of age who are charged with a criminal offense in the Criminal Division.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.