

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 95
3 entitled “An act relating to jurisdiction over delinquency proceedings by the
4 Family Division of the Superior Court” respectfully reports that it has
5 considered the same and recommends that the Senate propose to the House that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 § 33. JURISDICTION; FAMILY DIVISION

10 (a) Notwithstanding any other provision of law to the contrary, the Family
11 Division shall have exclusive jurisdiction to hear and dispose of the following
12 proceedings filed or pending on or after October 1, 1990:

13 * * *

14 (b) The Family Division has nonexclusive jurisdiction to hear and dispose
15 of proceedings involving misdemeanor motor vehicle offenses filed or pending
16 on or after July 1, 2016, pursuant to 33 V.S.A. §§ 5201, 5203, and 5280. The
17 Family Division of the Superior Court shall forward a record of any conviction
18 for violation of a law related to motor vehicle traffic control, other than a
19 parking violation, to the Commissioner of Motor Vehicles pursuant to
20 23 V.S.A. § 1709.

1 Sec. 2. 33 V.S.A. § 5102 is amended to read:

2 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

3 * * *

4 (28) “Victim” shall have the same meaning as in 13 V.S.A. § 5301(4).

5 (29) “Youth” shall mean a person who is the subject of a motion for
6 youthful offender status or who has been granted youthful offender status.

7 *Effective 1/1/2018*

8 Sec. 3. 33 V.S.A. § 5103 is amended to read:

9 § 5103. JURISDICTION

10 (a) The Family Division of the Superior Court shall have exclusive
11 jurisdiction over all proceedings concerning a child who is or who is alleged to
12 be a delinquent child or a child in need of care or supervision brought under
13 the authority of the juvenile judicial proceedings chapters, except as otherwise
14 provided in such chapters.

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

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

4 (2)(A) Jurisdiction over a child who has been adjudicated delinquent
5 may be extended until six months beyond the child's ~~18th~~ 19th birthday if ~~the~~
6 ~~offense for which the child has been adjudicated delinquent is a nonviolent~~
7 ~~misdemeanor and~~ the child was 16 or 17 years old when he or she committed
8 the offense.

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

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

13 ~~(D) As used in this subdivision, "nonviolent misdemeanor" means a~~
14 ~~misdemeanor offense which is not a listed crime as defined in 13 V.S.A.~~
15 ~~§ 5301(7), an offense involving sexual exploitation of children in violation of~~
16 ~~13 V.S.A. chapter 64, or an offense involving violation of a protection order in~~
17 ~~violation of 13 V.S.A. § 1030.~~

18 (d) The Court may terminate its jurisdiction over a child prior to the child's
19 18th birthday by order of the Court. If the child is not subject to another
20 juvenile proceeding, jurisdiction shall terminate automatically in the following
21 circumstances:

1 18, shall originate in the Criminal Division of the Superior Court, provided that
2 jurisdiction may be transferred in accordance with this chapter.

3 (d) Any proceeding concerning a child who is alleged to have committed a
4 misdemeanor offense before attaining 17 years of age shall originate in the
5 Family Division of the Superior Court.

6 (e) Any proceeding concerning a child who is alleged to have committed a
7 felony offense other than those specified in subsection 5204(a) of this title
8 before attaining 17 years of age shall originate in the Family Division of the
9 Superior Court provided that jurisdiction may be transferred in accordance
10 with this chapter.

11 (f) If the State requests that custody of the child be transferred to the
12 Department, a temporary care hearing shall be held as provided in subchapter 3
13 of this chapter.

14 (e)(g) A petition may be withdrawn by the State's Attorney at any time
15 prior to the hearing thereon, in which event the child shall be returned to the
16 custodial parent, guardian, or custodian, the proceedings under this chapter
17 terminated, and all files and documents relating thereto sealed under section
18 5119 of this title.

19 *Effective 1/1/2018*

20 Sec. 5. 33 V.S.A. § 5201 is amended to read:

21 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

1 (a) Proceedings under this chapter shall be commenced by:

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

4 (2) the filing of a delinquency petition by a 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.

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

14 (d) Any proceeding concerning a child who is alleged to have committed a
15 misdemeanor offense before attaining ~~17~~ 18 years of age shall originate in the
16 Family Division of the Superior Court.

17 (e) Any proceeding concerning a child who is alleged to have committed a
18 felony offense other than those specified in subsection 5204(a) of this title
19 before attaining ~~17~~ 18 years of age shall originate in the Family Division of the
20 Superior Court provided that jurisdiction may be transferred in accordance
21 with this chapter.

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* * *

Effective 1/1/2017

Sec. 6. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~the age of 16~~ 17 years of age at the time the offense charged was alleged to have been committed and the offense charged is ~~not one of those specified in subsection 5204(a) of this title~~ a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

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

1 (c) If it appears to the State’s Attorney that the defendant was ~~over the age~~
2 ~~of 16 years of age and under the age of 18~~ at the time the ~~offense~~ felony
3 charged was alleged to have been committed and the ~~offense~~ felony charged is
4 not an offense specified in subsection 5204(a) of this title, the State’s Attorney
5 may shall file charges in the Family or Criminal Division of the Superior
6 Court. If charges in such a matter are filed in the Criminal Division of the
7 Superior Court, the Criminal Division of the Superior Court may forthwith
8 transfer the proceeding to the Family Division of the Superior Court under the
9 authority of this chapter, and the person shall thereupon be considered to be
10 subject to this chapter as a child charged with a delinquent act.

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

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

3 *Effective 1/1/2018*

4 Sec. 7. 33 V.S.A. § 5203 is amended to read:

5 § 5203. TRANSFER FROM OTHER COURTS

6 (a) If it appears to a Criminal Division of the Superior Court that the
7 defendant was under ~~17~~ 18 years of age at the time the offense charged was
8 alleged to have been committed and the offense charged is a misdemeanor, that
9 Court shall forthwith transfer the case to the Family Division of the Superior
10 Court under the authority of this chapter.

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

18 (c) If it appears to the State's Attorney that the defendant was ~~16~~ under 18
19 years of age at the time the felony offense charged was alleged to have been
20 committed and the felony charged is not an offense specified in subsection

1 5204(a) of this title, the State’s Attorney shall file charges in the Family
2 Division of the Superior Court.

3 * * *

4 *Effective 7/1/2016*

5 Sec. 8. 33 V.S.A. § 5204 is amended to read:

6 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
7 COURT

8 (a) After a petition has been filed alleging delinquency, upon motion of the
9 State’s Attorney and after hearing, the Family Division of the Superior Court
10 may transfer jurisdiction of the proceeding to the Criminal Division of the
11 Superior Court, if the child had attained ~~the age of 16~~ years of age but not ~~the~~
12 ~~age of 18~~ years of age at the time the act was alleged to have occurred and the
13 delinquent act set forth in the petition was not one of those specified in
14 subdivisions (1)-(12) of this subsection or if the child had attained ~~the age of~~
15 ~~10~~ 12 years of age but not ~~the age of 14~~ years of age at the time the act was
16 alleged to have occurred, and if the delinquent act set forth in the petition was
17 any of the following:

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

19 (2) assault and robbery with a dangerous weapon as defined in

20 13 V.S.A. § 608(b);

1 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.

2 § 608(c);

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

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

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

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

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

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

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

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

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

12 § 1201(c).

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

20 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)
21 of this section, the Family Division of the Superior Court shall conduct a

1 hearing in accordance with procedures specified in subchapter 2 of this chapter
2 to determine whether:

3 (1) there is probable cause to believe that the child committed ~~an act~~
4 ~~listed in subsection (a) of this section~~ the charged offense; and

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

8 * * *

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

12 (h) If a person who has not attained ~~the age of~~ 16 years of age at the time of
13 the alleged offense has been prosecuted as an adult and is not convicted of one
14 of the acts listed in subsection (a) of this section but is convicted only of one or
15 more lesser offenses, jurisdiction shall be transferred to the Family Division of
16 the Superior Court for disposition. A conviction under this subsection shall be
17 considered an adjudication of delinquency and not a conviction of crime, and
18 the entire matter shall be treated as if it had remained in the Family Division
19 throughout. In case of an acquittal for a matter specified in this subsection and
20 in case of a transfer to the Family Division under this subsection, the Court

1 shall order the sealing of all applicable files and records of the Court, and such
2 order shall be carried out as provided in subsection 5119(e) of this title.

3 * * *

4 *Effective 1/1/2017*

5 Sec. 9. 33 V.S.A. § 5204 is amended to read:

6 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
7 COURT

8 (a) After a petition has been filed alleging delinquency, upon motion of the
9 State's Attorney and after hearing, the Family Division of the Superior Court
10 may transfer jurisdiction of the proceeding to the Criminal Division of the
11 Superior Court, if the child had attained 16 years of age but not 18 years of age
12 at the time the act was alleged to have occurred and the delinquent act set forth
13 in the petition ~~was not one of those specified in subdivisions (1)–(12) of this~~
14 ~~subsection~~ is a felony not specified in subdivisions (1)–(12) of this subsection
15 or if the child had attained 12 years of age but not 14 years of age at the time
16 the act was alleged to have occurred, and if the delinquent act set forth in the
17 petition was any of the following:

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

19 (2) assault and robbery with a dangerous weapon as defined in

20 13 V.S.A. § 608(b);

1 Family Division under this subsection, the court shall order the sealing of all
2 applicable files and records of the court, and such order shall be carried out as
3 provided in subsection 5119(e) of this title.

4 (j) The record of a hearing conducted under subsection (c) of this section
5 and any related files shall be open to inspection only by persons specified in
6 subsections 5117(b) and (c) of this title in accordance with section 5119 of this
7 title and by the attorney for the child.

8 Sec. 10. 33 V.S.A. § 5206 is added to read:

9 § 5206. CITATION OF 16- AND 17-YEAR-OLDS

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

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

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

20 (1) 23 V.S.A. §§ 674 (driving while license suspended or revoked);
21 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

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

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

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

5 Sec. 11. 33 V.S.A. § 5234 is amended to read:

6 § 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS

7 INVOLVING A LISTED CRIME

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

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

11 (A) when a delinquency petition has been filed, the name of the child
12 and any conditions of release initially ordered for the child or modified by the
13 Court that are related to the victim or a member of the victim's family or
14 current household;

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

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

1 ~~(2)(D) To be notified by the prosecutor's office as to whether~~
2 delinquency has been found and disposition has occurred, ~~including~~ and any
3 conditions ~~or~~ of release or conditions of probation that are related to the victim
4 or a member of the victim's family or current household and any restitution
5 relevant to the victim, when ordered.

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

8 (3) To attend the disposition hearing and to present a victim's victim
9 impact statement ~~at the disposition hearing in accordance with subsection~~
10 5233(b) of this title, including testimony in support of his or her claim for
11 restitution pursuant to section 5235 of this title, and to be notified as to the
12 disposition ~~pursuant to subsection 5233(d) of this title, including probation.~~
13 The court shall consider the victim's statement when ordering disposition. The
14 victim shall not be personally present at any portion of the disposition hearing
15 except to present a victim impact statement or to testify in support of his or her
16 claim for restitution unless the court finds that the victim's presence is
17 necessary in the interest of justice.

18 (4) Upon request, to be notified by the agency having custody of the
19 delinquent child before he or she is discharged from a secure or staff-secured
20 residential facility. The name of the facility shall not be disclosed. An
21 agency's inability to give notification shall not preclude the release. However,

1 in such an event, the agency shall take reasonable steps to give notification of
2 the release as soon thereafter as practicable. Notification efforts shall be
3 deemed reasonable if the agency attempts to contact the victim at the address
4 or telephone number provided to the agency in the request for notification.

5 ~~(5) To obtain the name of the child in accordance with sections 5226~~
6 ~~and 5233 of this title. To have the Court take his or her views into~~
7 ~~consideration in the Court's disposition order. If the victim is not present, the~~
8 ~~Court shall consider whether the victim has expressed, either orally or in~~
9 ~~writing, views regarding disposition and shall take those views into account~~
10 ~~when ordering disposition.~~

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

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

15 Sec. 12. 33 V.S.A. § 5234a is added to read:

16 § 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
17 INVOLVING A NONLISTED CRIME

18 (a) The victim in a delinquency proceeding involving an offense that is not
19 a listed crime shall have the following rights:

20 (1) To be notified by the prosecutor's office in a timely manner of the
21 following:

1 (A) his or her rights as provided by law, information regarding how a
2 delinquency proceeding is adjudicated, the confidential nature of juvenile
3 proceedings, and that it is unlawful to disclose confidential information
4 concerning the proceedings;

5 (B) when a delinquency petition is filed, and any conditions of
6 release initially ordered for the child or modified by the Court that relate to the
7 victim or a member of the victim's family or current household; and
8 ~~Notification regarding conditions of release or conditions of probation shall~~
9 ~~include the child's name.~~

10 (C) when a dispositional court proceeding is scheduled to take place
11 and when a court proceeding of which he or she has been notified will not take
12 place as scheduled.

13 (2) That delinquency has been found and disposition has occurred, and
14 any conditions of release or conditions of probation that are related to the
15 victim or a member of the victim's family or current household and any
16 restitution ordered.

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

19 (4) To attend the disposition hearing for the sole purpose of presenting
20 to the Court a victim impact statement, including testimony in support of his or
21 her claim for restitution pursuant to section 5235 of this title. The victim shall

1 not be personally present at any portion of the disposition hearing except to
2 present a victim impact statement or to testify in support of his or her claim for
3 restitution unless the Court finds that the victim’s presence is necessary in the
4 interest of justice.

5 (5) To have the Court take his or her views into consideration in the
6 Court’s disposition order. If the victim is not present, the Court shall consider
7 whether the victim has expressed, either orally or in writing, views regarding
8 disposition and shall take those views into account when ordering disposition.
9 The Court shall order that the victim be notified as to the identity of the child
10 upon disposition if the Court finds that release of the child’s identity to the
11 victim is in the best interests of both the child and the victim and serves the
12 interests of justice.

13 (b) The prosecutor’s office shall keep the victim informed and consult with
14 the victim through the delinquency proceedings.

15 *Effective 7/1/2018*

16 Sec. 13. 33 V.S.A. § 5280 is added to read:

17 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

18 PROCEEDINGS IN THE FAMILY DIVISION

19 (a) A proceeding under this subchapter shall be commenced by:

20 (1) the filing of a youthful offender petition by a State’s Attorney; or

1 (2) transfer to the Family Court of a proceeding from the Criminal
2 Division of the Superior Court as provided in section 5281 of this title.

3 (b) A State’s Attorney may commence a proceeding in the Family Division
4 of the Superior court concerning a child who is alleged to have committed an
5 offense after attaining 16 years of age, but not 22 years of age that could
6 otherwise be filed in the Criminal Division.

7 (c) If a State’s Attorney files a petition under subdivision (a)(1) of this
8 section, the case shall proceed as provided under subsection 5281(b) of this
9 title.

10 Sec. 14. 33 V.S.A. § 5281 is amended to read:

11 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

12 (a) A motion may be filed in the Criminal Division of the Superior Court
13 requesting that a defendant under ~~18~~ 22 years of age in a criminal proceeding
14 who had attained ~~the age of 10~~ 12 years of age but not ~~the age of 18~~ 22 years of
15 age at the time the offense is alleged to have been committed be treated as a
16 youthful offender. The motion may be filed by the State’s Attorney, the
17 defendant, or the Court on its own motion.

18 (b) Upon the filing of a motion under this section ~~and the entering of a~~
19 ~~conditional plea of guilty by the youth, the Criminal Division shall enter an~~
20 ~~order deferring the sentence and transferring the case to~~ or the filing of a
21 youthful offender petition pursuant to § 5280 of this title, the Family Division

1 ~~for~~ shall hold a hearing ~~on the motion~~ pursuant to § 5283 of this title. Copies
2 of all records relating to the case shall be forwarded to the Family Division.
3 Conditions of release and any Department of Corrections supervision or
4 custody shall remain in effect until the Family Division ~~approves the motion~~
5 accepts the case for treatment as a youthful offender and orders conditions of
6 juvenile probation pursuant to section 5284 of this title, or the case is otherwise
7 concluded.

8 (c) ~~A plea of guilty entered by the youth pursuant to subsection (b) of this~~
9 ~~section shall be conditional upon the Family Division granting the motion for~~
10 ~~youthful offender status.~~

11 ~~(d)~~(1) If the Family Division ~~denies the motion~~ rejects the case for youthful
12 offender treatment pursuant to subsection 5284 of this title, the case shall be
13 ~~returned~~ transferred to the Criminal Division, ~~and the youth shall be permitted~~
14 ~~to withdraw the plea~~. The conditions of release imposed by the Criminal
15 Division shall remain in effect, and the case shall proceed as though the motion
16 for youthful offender treatment or youthful offender petition had not been
17 ~~made~~ filed.

18 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and
19 Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of
20 the motion for youthful offender treatment and any information related to the

1 youthful offender proceeding shall be inadmissible against the youth for any
2 purpose in the subsequent Criminal Division proceeding.

3 (d) If the Family Division accepts the case for youthful offender treatment,
4 the case shall proceed to a confidential merits hearing or admission pursuant to
5 sections 5227–5229 of this title. **If the youth is adjudicated, the Court will**
6 **create a criminal case reflecting the charge and conviction.**

7 Sec. 15. 33 V.S.A. § 5282 is amended to read:

8 § 5282. REPORT FROM THE DEPARTMENT

9 (a) Within 30 days after the case is transferred to the Family Division or a
10 youthful offender petition is filed in the Family Division, unless the Court
11 extends the period for good cause shown, the Department shall file a report
12 with the Family Division of the Superior Court.

13 (b) A report filed pursuant to this section shall include the following
14 elements:

15 (1) a recommendation as to whether youthful offender status is
16 appropriate for the youth;

17 (2) a disposition case plan including proposed services and proposed
18 conditions of juvenile probation in the event youthful offender status is
19 approved and the youth is adjudicated;

20 (3) a description of the services that may be available for the youth
21 when he or she reaches 18 years of age.

1 (c) A report filed pursuant to this section is privileged and shall not be
2 disclosed to any person other than the Department, the Court, the State's
3 Attorney, the youth, the youth's attorney, the youth's guardian ad litem, the
4 Department of Corrections, or any other person when the Court determines that
5 the best interests of the youth would make such a disclosure desirable or
6 helpful.

7 Sec 16. 33 V.S.A. § 5283 is amended to read:

8 § 5283. HEARING IN FAMILY DIVISION

9 (a) Timeline. A hearing on the motion for youthful offender status shall be
10 held no later than 35 days after the transfer of the case from the Criminal
11 Division or filing of a youthful offender petition in the Family Division.

12 (b) Notice. Notice of the hearing shall be provided to the State's Attorney;
13 the youth; the youth's parent, guardian, or custodian; the Department; and the
14 Department of Corrections.

15 (c) Hearing procedure.

16 (1) If the motion is contested, all parties shall have the right to present
17 evidence and examine witnesses. Hearsay may be admitted and may be relied
18 on to the extent of its probative value. If reports are admitted, the parties shall
19 be afforded an opportunity to examine those persons making the reports, but
20 sources of confidential information need not be disclosed.

1 (2) Hearings under subsection 5284(a) of this title shall be open to the
2 public. All other youthful offender proceedings shall be confidential.

3 (d) The burden of proof shall be on the moving party to prove by a
4 preponderance of the evidence that a child should be granted youthful offender
5 status. If the Court makes the motion, the burden shall be on the youth.

6 (e) Further hearing. On its own motion or the motion of a party, the Court
7 may schedule a further hearing to obtain reports or other information necessary
8 for the appropriate disposition of the case.

9 Sec. 17. 33 V.S.A. § 5284 is amended to read:

10 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
11 ORDER

12 (a) In a hearing on a motion for youthful offender status, the Court shall
13 first consider whether public safety will be protected by treating the youth as a
14 youthful offender. If the Court finds that public safety will not be protected by
15 treating the youth as a youthful offender, the Court shall deny the motion and
16 ~~return~~ transfer the case to the Criminal Division of the Superior Court pursuant
17 to subsection 5281(d) of this title. If the Court finds that public safety will be
18 protected by treating the youth as a youthful offender, the Court shall proceed
19 to make a determination under subsection (b) of this section.

20 (b)(1) The Court shall deny the motion if the Court finds that:

1 (A) the youth is not amenable to treatment or rehabilitation as a
2 youthful offender; or

3 (B) there are insufficient services in the juvenile court system and the
4 Department to meet the youth's treatment and rehabilitation needs.

5 (2) The Court shall grant the motion if the Court finds that:

6 (A) the youth is amenable to treatment or rehabilitation as a youthful
7 offender; and

8 (B) there are sufficient services in the juvenile court system and the
9 Department to meet the youth's treatment and rehabilitation needs.

10 (c) If the Court approves the motion for youthful offender treatment after
11 an adjudication pursuant to subsection 5281(d) of this title, the Court:

12 (1) shall approve a disposition case plan and impose conditions of
13 juvenile probation on the youth; and

14 (2) may transfer legal custody of the youth to a parent, relative, person
15 with a significant relationship with the youth, or Commissioner, provided that
16 any transfer of custody shall expire on the youth's 18th birthday.

17 (d) The Department shall be responsible for supervision of and providing
18 services to the youth until he or she reaches ~~the age of 18~~ years of age. A lead
19 case manager shall be designated who shall have final decision-making
20 authority over the case plan and the provision of services to the youth. The

1 youth shall be eligible for appropriate community-based programming and
2 services provided by the Department.

3 (e) The youth shall not be permitted to withdraw his or her plea of guilty
4 after youthful offender status is approved except to correct manifest injustice
5 pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure.

6 Sec. 18. 33 V.S.A. § 5106 is amended to read:

7 § 5106. POWERS AND DUTIES OF COMMISSIONER

8 Subject to the limitations of the juvenile judicial proceedings chapters or
9 those imposed by the Court, and in addition to any other powers granted to the
10 Commissioner under the laws of this State, the Commissioner has the
11 following authority with respect to a child who is or may be the subject of a
12 petition brought under the juvenile judicial proceedings chapters:

13 (1) To undertake assessments and make reports and recommendations to
14 the Court as authorized by the juvenile judicial proceedings chapters.

15 (2) To investigate complaints and allegations that a child is in need of
16 care or supervision for the purpose of considering the commencement of
17 proceedings under the juvenile judicial proceedings chapters.

18 (3) To supervise and assist a child who is placed under the
19 Commissioner's supervision or in the Commissioner's legal custody by order
20 of the Court, and to administer sanctions in accordance with graduated

1 sanctions established by policy and that are consistent with the juvenile
2 probation certificate.

3 * * *

4 Sec. 19. 33 V.S.A. § 5225 is amended to read:

5 § 5225. PRELIMINARY HEARING; RISK ASSESSMENT

6 (a) A preliminary hearing shall be held at the time and date specified on the
7 citation or as otherwise ordered by the Court. If a child is taken into custody
8 prior to the preliminary hearing, the preliminary hearing shall be at the time of
9 the temporary care hearing.

10 (b) Prior to the preliminary hearing, the child shall be afforded an
11 opportunity to undergo a risk and needs screening, which shall be conducted
12 by the Department or by a community provider that has contracted with the
13 Department to provide risk and need screenings for children alleged to have
14 committed delinquent acts. If the child participates in such a screening, the
15 Department or the community provider shall report the risk level result of the
16 screening to the State's Attorney. In lieu of filing a charge, the State's
17 Attorney may refer a child directly to a youth-appropriate community-based
18 provider that has been approved by the Department, which may include a
19 community justice center or a balanced and restorative justice program.
20 Referral to a community-based provider pursuant to this subdivision shall not
21 require the State's Attorney to file a charge. If the community-based provider

1 does not accept the case or if the child fails to complete the program in a
2 manner deemed satisfactory and timely by the provider, the child's case shall
3 return to the State's Attorney for charging consideration. If a charge is brought
4 in the Family Division, the risk level result shall be provided to the child's
5 attorney. Except on agreement of the parties, the results shall not be provided
6 to the Court until after a merits finding has been made.

7 (c) Counsel for the child shall be assigned prior to the preliminary hearing.

8 (d) At the preliminary hearing, the Court shall appoint a guardian ad litem
9 for the child. The guardian ad litem may be the child's parent, guardian, or
10 custodian. On its own motion or motion by the child's attorney, the Court may
11 appoint a guardian ad litem other than a parent, guardian or custodian.

12 (e) At the preliminary hearing, a denial shall be entered to the allegations of
13 the petition, unless the juvenile, after adequate consultation with the guardian
14 ad litem and counsel, enters an admission. If the juvenile enters an admission,
15 the disposition case plan required by section 5230 of this title may be waived
16 and the Court may proceed directly to disposition, provided that the juvenile,
17 the custodial parent, the State's Attorney, the guardian ad litem, and the
18 Department agree.

19 (f) The Court may order the child to abide by conditions of release pending
20 a merits or disposition hearing.

21 Sec. 20. 33 V.S.A. § 5285 is amended to read:

1 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

2 (a) If it appears that the youth has violated the terms of juvenile probation
3 ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion
4 for modification or revocation of youthful offender status may be filed in the
5 Family Division of the Superior Court. The Court shall set the motion for
6 hearing as soon as practicable. The hearing may be joined with a hearing on a
7 violation of conditions of probation under section 5265 of this title. A
8 supervising juvenile or adult probation officer may detain in an adult facility a
9 youthful offender who has attained ~~the age of 18~~ years of age for violating
10 conditions of probation.

11 (b) A hearing under this section shall be held in accordance with section
12 5268 of this title.

13 (c) If the Court finds after the hearing that the youth has violated the terms
14 of his or her probation, the Court may:

15 (1) maintain the youth's status as a youthful offender, with modified
16 conditions of juvenile probation if the Court deems it appropriate;

17 (2) revoke the youth's status as a youthful offender status and return the
18 case to the Criminal Division for sentencing; or

19 (3) transfer supervision of the youth to the Department of Corrections
20 with all of the powers and authority of the Department and the Commissioner
21 under Title 28, including graduated sanctions and electronic monitoring.

1 (d) If a youth's status as a youthful offender is revoked and the case is
2 returned to the Criminal Division under subdivision (c)(2) of this section, the
3 Court shall hold a sentencing hearing and impose sentence. When determining
4 an appropriate sentence, the Court may take into consideration the youth's
5 degree of progress toward rehabilitation while on youthful offender status.
6 The Criminal Division shall have access to all Family Division records of the
7 proceeding.

8 Sec. 21. 13 V.S.A. § 7554 is amended to read:

9 § 7554. RELEASE PRIOR TO TRIAL

10 * * *

11 (j) Any juvenile between 14 and 16 years of age who is charged with a
12 listed crime as defined in subdivision 5301(7) of this title shall appear before a
13 judicial officer and be ordered released pending trial in accordance with this
14 section within 24 hours of the juvenile's arrest.

15 Sec. 22. 28 V.S.A. § 1101 is amended to read:

16 § 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
17 REGARDING JUVENILE SERVICES

18 The Commissioner is charged with the following powers and
19 responsibilities regarding the administration of juvenile services:

1 (1) to provide appropriate, separate facilities for the custody and
2 treatment of ~~children~~ offenders under 25 years of age committed to his or her
3 custody in accordance with the laws of the State;

4 * * *

5 Sec. 23. 14 V.S.A. § 2666 is amended to read:

6 § 2666. MODIFICATION; TERMINATION

7 * * *

8 (b) Where the permanent guardianship is terminated by the ~~probate division~~
9 ~~of the superior court~~ Probate Division of the Superior Court order or the death
10 of the permanent guardian, the custody and guardianship of the child shall not
11 revert to the parent, but to the ~~commissioner for children and families~~
12 Commissioner for Children and Families as if the child had been abandoned.

13 (1) Upon the death of the permanent guardian or when the permanent
14 guardianship is otherwise terminated by order of the Probate Division, the
15 Probate Division shall issue an order placing the child in the custody of the
16 Commissioner and shall immediately notify the Department for Children and
17 Families, the State's Attorney, and the Family Division.

18 (2) The order transferring the child's legal custody to the Commissioner
19 shall have the same legal effect as a similar order issued by the Family
20 Division under the authority of 33 V.S.A. chapters 51-53.

1 § 5229. MERITS ADJUDICATION

2 * * *

3 (g) If, based on the child’s admission or the evidence presented, the Court
4 finds beyond a reasonable doubt that the child has committed a delinquent act,
5 the Court shall order the Department to prepare a disposition case plan ~~within~~
6 ~~28 days of the merits adjudication and shall set the matter for a~~ not later than
7 seven business days before the disposition hearing. In no event, shall a
8 disposition hearing be held later than 35 days after a finding that a child is
9 delinquent.

10 (h) The Court may proceed directly to disposition providing that the child,
11 the custodial parent, the State’s Attorney, and the Department agree.

12 Sec. 27. 33 V.S.A. § 5230 is amended to read:

13 § 5230. DISPOSITION CASE PLAN

14 (a) Filing of case plan. ~~The~~ Following the finding by the Court that a child
15 is delinquent, the Department shall file a disposition case plan ~~no~~ not later than
16 ~~28 days from the date of the finding by the Court that a child is delinquent~~
17 seven business days before the scheduled disposition hearing. The disposition
18 case plan shall not be used or referred to as evidence prior to a finding that a
19 child is delinquent.

20 * * *

21 Sec. 28. 33 V.S.A. § 5315 is amended to read:

1 § 5315. MERITS ADJUDICATION

2 * * *

3 (f) If the Court finds that the allegations made in the petition have not been
4 established, the Court shall dismiss the petition and vacate any temporary
5 orders in connection with this proceeding. A dismissal pursuant to this
6 subsection is a final order subject to appeal.

7 (g) If the Court finds that the allegations made in the petition have been
8 established based on the stipulation of the parties or on the evidence if the
9 merits are contested, the Court shall order the Department to prepare a
10 disposition case plan ~~within 28 days of the merits hearing and shall set the~~
11 ~~matter for a~~ not later than seven business days before a scheduled disposition
12 hearing. An adjudication pursuant to this subsection is not a final order subject
13 to appeal separate from the resulting disposition order.

14 * * *

15 Sec. 29. 33 V.S.A. § 5315a is added to read:

16 § 5315a. MERITS STIPULATION

17 (a) At any time after the filing of the CHINS petition and prior to an order
18 of adjudication on the merits, the court may approve a written stipulation to the
19 merits of the petition and any or all elements of the disposition plan, including
20 the permanency goal, placement, visitation, or services.

21 (b) The court may approve a written stipulation if:

1 her children by filing a complaint under this chapter. A minor 16 years of age
2 or older may file a complaint under this chapter seeking relief on his or her
3 own behalf. The plaintiff shall submit an affidavit in support of the order.

4 * * *

5 Sec. 32. 15 V.S.A. § 1104 is amended to read:

6 § 1104. EMERGENCY RELIEF

7 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
8 orders under this chapter may be issued ex parte, without notice to the
9 defendant, upon motion and findings by the Court that the defendant has
10 abused the plaintiff or his or her children, or both. The plaintiff shall submit an
11 affidavit in support of the order. A minor 16 years of age or older may seek
12 relief on his or her own behalf. Relief under this section shall be limited as
13 follows:

14 * * *

15 Sec. 33. DEPARTMENT OF CHILDREN AND FAMILIES; DEPARTMENT
16 OF CORRECTIONS; YOUTHFUL OFFENDERS; REPORT

17 The Commissioners for Children and Families and of Corrections shall
18 consider the implications of adjudicating as youthful offenders all defendants
19 who have attained 18 years of age, but not 21 years of age, who have not been
20 charged with an offense specified in 33 V.S.A. § 5204(a). The Commissioners
21 shall report their findings and any associated recommendations or proposed

1 legislation to the Joint Legislative Justice Oversight Committee on or before
2 November 1, 2016.

3 Sec. 34. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;
4 2016 LEGISLATIVE INTERIM

5 During the 2016 legislative interim, the Joint Legislative Justice Oversight
6 Committee shall:

7 (1) evaluate the fiscal implications of adjudicating in the Family
8 Division of the Superior Court all offenders 18–20 years of age who are not
9 charged with an offense specified in 33 V.S.A. § 5204(a);

10 (2) consider whether the creation of an Office for Youth Justice or
11 similar with jurisdiction to coordinate supervision and services for youth
12 adjudicated juvenile delinquents and youthful offenders 25 years of age and
13 younger would improve outcomes for youth in the justice system;

14 (3) consider expanding youthful offender status eligibility to offenders
15 24 years of age and younger, while requiring offenders 22–24 years of age to
16 be under Department of Corrections supervision;

17 (4) consider whether State’s Attorneys should have the discretion to
18 bring charges against 14 and 15 year olds alleged to have committed an act
19 specified in subsection 5204(a) in either the Criminal or Family Division of the
20 Superior Court;

1 (b) Secs. 3 (Jurisdiction), 5 (commencement of delinquency proceedings),
2 and 8 (Transfer from other Courts) shall take effect on January 1, 2018.

3 (c) Secs. 13 (Commencement of Youthful Offender Proceedings in the
4 Family Division), 14 (Motion in Criminal Division of Superior Court), 15
5 (Report from the Department), 16 (Hearing in Family Division), and 17
6 (Youthful Offender Determination and Disposition Order) shall take effect on
7 July 1, 2018.

8 (c) The remaining sections shall take effect on July 1, 2016.

9

10 (Committee vote: _____)

11

12

Senator _____

13

FOR THE COMMITTEE