

Senate Calendar

WEDNESDAY, MARCH 09, 2011

SENATE CONVENES AT: 11:30 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

CONSIDERATION POSTPONED

Second Reading

Favorable with Recommendation of Amendment

S. 58.

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

The general assembly intends this act to clarify the authority of the state to institute criminal proceedings against an adult who committed a crime while a minor. Juvenile judicial proceedings are intended, among other things, to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assures balanced attention to the protection of the community, accountability to victims and the community for offenses, and the development of competencies to enable children to become responsible and productive members of the community. However, the general assembly never intended the juvenile procedures statutes to be used to permit a person who commits a crime to escape the consequences of that behavior simply by turning 18 before the state has filed charges against the person. This act clarifies, as the general assembly had always intended, that under the proper circumstances and for serious offenses, the state may bring charges against a person 18 years of age or older who committed a crime before turning 18.

Sec. 2. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME COMMITTED WHEN DEFENDANT WAS UNDER AGE 18

(a) A proceeding may be commenced in the family division against a defendant who has attained the age of 18 if:

(1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The family division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the criminal division if the family division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the family division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) The family division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age and the family division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the family division system and the department for children and families or the department of corrections to meet the youth's treatment and rehabilitation needs.

(B) If the family division orders that the defendant be treated as a youthful offender, the court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the family division finds after hearing that the defendant has violated the terms of his or her probation, the family division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the criminal division pursuant to subdivision (1) of this subsection.

(3) In making the determination required by subdivision (1)(D) of this subsection, the court may consider, among other matters:

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

(B) The extent and nature of the defendant's prior criminal record and record of delinquency.

(C) The nature of past treatment efforts and the nature of the defendant's response to them.

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

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

(F) Whether the protection of the community would be best served by transferring jurisdiction from the family division to the criminal division of the superior court.

(c) If the family division does not transfer the case to the criminal division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

NEW BUSINESS

Joint Resolutions For Action

J.R.S. 20.

Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

By Senator Nitka,

J.R.S. 20. Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

Whereas, declarations have been submitted by the following justices and judges that they be retained for another six-year term, the Honorable Justice

Reiber, Justice Burgess, Justice Dooley, Justice Johnson, Justice Skoglund, Judge Bent, Judge Corsones, Judge Wesley, Judge Devine, Judge DiMauro, Judge Eaton, Judge Keller, Judge Kupersmith, Judge Levitt and Judge Rainville, and

Whereas, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

Whereas, the Committee anticipates that it will be unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 10, 2011, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 17, 2011, the date specified in subsection 10(b) of Title 2, and

Whereas, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 24, 2011, at nine o'clock and thirty minutes in the forenoon to vote on the retention of a Chief Justice and four Associate Justices of the Supreme Court, three Superior Court Judges, and seven District Court Judges. In case the vote to retain said Justices and Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kate Duffy of Williston – Commissioner of the Department of Human

Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2011 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 11, 2011.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 18, 2011.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).

**Statewide Public Hearing on H.202/S.57
HEALTH CARE REFORM BILL
Monday Evening March 14, 2011**

House Health Care and Senate Health and Welfare Committees

Monday, March 14, 2011, 6:00 - 8:00 p.m., on Vermont Interactive Television

The House Health Care and Senate Health and Welfare Committees will hold a joint public hearing on Vermont Interactive Television (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the health care legislation proposed by Governor Shumlin.

All 15 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, Waterbury, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

The health care bill has been introduced in the House as H.202 and in the Senate as S.57. It can be viewed at the Legislature's website: <http://www.leg.state.vt.us/docs/2012/bills/Intro/H-202.pdf>

For information about the format of this event or to submit written testimony, call the House Health Care Committee at (802) 828-2264 or e-mail lstarr@leg.state.vt.us