

1 **REPRESENTATIVE WIZOWATY PROPOSAL**

2 TO THE HOUSE OF REPRESENTATIVES:

3 The Committee on Judiciary to which was referred House Bill No. 618 entitled
4 “An act relating to exclusive jurisdiction over delinquency proceedings by the
5 Family Division of the Superior Court” respectfully reports that it has
6 considered the same and recommends that the bill be amended by striking out
7 all after the enacting clause and inserting in lieu thereof the following:

8 Sec. 1. 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 21st 19th birthday if
6 the offense for which the child has been adjudicated delinquent is a nonviolent
7 misdemeanor and the child was 17 years old when he or she committed the
8 offense Court finds that doing so would be in the best interests of the child and
9 public safety.

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

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

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 [Repealed.]~~

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~~ upon the discharge of a child from juvenile probation,
4 providing the child is not in the legal custody of the Commissioner;

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

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

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

10 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

11 (a) Except as otherwise provided in this chapter, all delinquency
12 proceedings under this chapter shall be in the Family Division of the Superior
13 Court. Proceedings under this chapter shall be commenced by:

14 (1) transfer to the ~~Court of a proceeding from another court~~ Family
15 Division as provided in section 5203 of this title; or

16 (2) the filing of a delinquency petition in the Family Division by a
17 ~~state's attorney~~ State's Attorney.

18 (b) If the proceeding is commenced by transfer from another court, no
19 petition need be filed; however, the ~~state's attorney~~ State's Attorney shall
20 provide to the Court the name and address of the child's custodial parent,

1 guardian, or custodian and the name and address of any noncustodial parent if
2 known.

3 (c) ~~Consistent with applicable provisions of Title 4, any proceeding~~
4 ~~concerning a child who is alleged to have committed an act specified in~~
5 ~~subsection 5204(a) of this title after attaining the age of 14, but not the age of~~
6 ~~18, shall originate in the Criminal Division of the Superior Court, provided that~~
7 ~~jurisdiction may be transferred in accordance with this chapter. [Repealed.]~~

8 * * *

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

10 (2) Notwithstanding subdivision (1) of this subsection, an order of
11 delinquency in proceedings transferred under subsection ~~5203(b)~~ section 5203
12 of this title, where the offense charged in the initial criminal proceedings was a
13 violation of those sections of Title 23 specified in ~~subdivision 23 V.S.A.~~
14 § 801(a)(1), shall be an event in addition to those specified therein, enabling
15 the Commissioner of Motor Vehicles to require proof of financial
16 responsibility under 23 V.S.A. chapter 11.

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

18 § 5203. TRANSFER FROM OTHER COURTS

19 (a) If it appears to a Criminal Division of the Superior Court that the
20 defendant was under ~~the age of 16~~ 18 years of age at the time the offense
21 charged was alleged to have been committed ~~and the offense charged is not~~

1 ~~one of those specified in subsection 5204(a) of this title, that Court shall~~
2 ~~forthwith transfer the case to the Family Division of the Superior Court under~~
3 ~~the authority of this chapter.~~

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

13 ~~(c) If it appears to the state's attorney that the defendant was over the age~~
14 ~~of 16 and under the age of 18 at the time the offense charged was alleged to~~
15 ~~have been committed and the offense charged is not an offense specified in~~
16 ~~subsection 5204(a) of this title, the state's attorney may file charges in the~~
17 ~~Family or Criminal Division of the Superior Court. If charges in such a matter~~
18 ~~are filed in the Criminal Division of the Superior Court, the Criminal Division~~
19 ~~of the Superior Court may forthwith transfer the proceeding to the Family~~
20 ~~Division of the Superior Court under the authority of this chapter, and the~~

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

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

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

16 **Sec. 5. REPEALS**

17 33 V.S.A. §§ 5104 (Retention of jurisdiction over youthful offenders), 5204
18 (Transfer from Family Division of the Superior Court) and 5281–88 (all
19 relating to youthful offenders) are repealed.

20 **Sec. 5. 33 V.S.A. § 5204. TRANSFER FROM FAMILY DIVISION OF THE**
21 **SUPERIOR COURT**

1 (a) After a petition has been filed alleging delinquency, upon motion of the
2 state's attorney and after hearing, the Family Division of the Superior Court
3 may transfer jurisdiction of the proceeding to the Criminal Division of the
4 Superior Court, if the child had attained the age of 16 but not the age of 18 at
5 the time the act was alleged to have occurred and the delinquent act set forth in
6 the petition was not one of those specified in subdivisions (1)–(12) of this
7 subsection or if the child had attained the age of 10 but not the age of 14 at the
8 time the act was alleged to have occurred, and if the delinquent act set forth in
9 the petition was any of the following constituted a listed offense as defined in
10 subdivision 5301(7) of Title 13:

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

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

14 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
15 608(e);

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

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

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

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

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

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

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

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

3 ~~(12) burglary into an occupied dwelling as defined in 13 V.S.A. §~~
4 ~~1201(e).~~

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

12 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)
13 of this section, the Family Division of the Superior Court shall conduct a
14 hearing in accordance with procedures specified in subchapter 2 of this chapter
15 to determine whether:

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

18 (2) neither public safety, ~~and~~ the interests of the community, or the best
19 interests of the child would ~~not~~ be served by treatment of the child under the
20 provisions of law relating to the Family Division of the Superior Court and
21 delinquent children.

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

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

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

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

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

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

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

15 (7) The relative likelihood of the child to re-offend as a result of
16 adjudication in the Family Division as compared to the Criminal Division.

17 (8) Current research on adolescent brain development.

18 (9) Whether the protection of the community would be better served by
19 transferring jurisdiction from the Family Division to the Criminal Division of
20 the Superior Court.

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

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

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

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

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

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

16 Sec. 6. EFFECTIVE DATE

17 This act shall take effect on passage.

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21 (Committee vote: _____)

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Representative [surname]

FOR THE COMMITTEE