

H.95

Introduced by Representatives Jewett of Ripton, Grad of Moretown,
Rachelson of Burlington, and Viens of Newport City

Referred to Committee on

Date:

Subject: Human services; delinquency proceedings

Statement of purpose of bill as introduced: This bill proposes to require that all charges involving criminal conduct by children under 18 years of age be filed as delinquency proceedings in the Family Division of the Superior Court rather than the Criminal Division. The bill provides the Family Division with the authority to transfer the proceedings to the Criminal Division in certain circumstances depending on the age of the child and the seriousness of the offense.

An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court

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

Sec. 1. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Except as otherwise provided in this chapter, all delinquency proceedings shall be in the Family Division of the Superior Court.

Proceedings under this chapter shall be commenced by:

(2) the filing of a delinquency petition in the Family Division by a State's Attorney.

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 [Repealed.]~~

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

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

2 § 5203. ~~TRANSFER FROM OTHER COURTS~~

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

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

18 ~~(c) If it appears to the State's Attorney that the defendant was over the age~~
19 ~~of 16 and under the age of 18 at the time the offense charged was alleged to~~
20 ~~have been committed and the offense charged is not an offense specified in~~
21 ~~subsection 5204(a) of this title, the State's Attorney may file charges in the~~
22 ~~Family or Criminal Division of the Superior Court. If charges in such a matter~~

1 ~~are filed in the Criminal Division of the Superior Court, the Criminal Division~~
2 ~~of the Superior Court may forthwith transfer the proceeding to the Family~~
3 ~~Division of the Superior Court under the authority of this chapter, and the~~
4 ~~person shall thereupon be considered to be subject to this chapter as a child~~
5 ~~charged with a delinquent act.~~

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

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

19 [Repealed.]

1 Sec. 4. 33 V.S.A. § 5204 is amended to read:

2 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
3 COURT

4 (a) After a petition has been filed alleging delinquency, upon motion of the
5 State's Attorney and after hearing, the Family Division of the Superior Court
6 may transfer jurisdiction of the proceeding to the Criminal Division of the
7 Superior Court, if:

8 (1) the child had attained ~~the age of 16~~ years of age but not ~~the age of~~
9 18 years of age at the time the act was alleged to have occurred ~~and the~~
10 ~~delinquent act set forth in the petition was not one of those specified in~~
11 ~~subdivisions (1) (12) of this subsection;~~ or

12 (2) if the child had attained ~~the age of 10~~ years of age but not ~~the age of~~
13 14 16 years of age at the time the act was alleged to have occurred; and if the
14 delinquent act set forth in the petition was any of the following:

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

16 (2)(B) assault and robbery with a dangerous weapon as defined in
17 13 V.S.A. § 608(b);

18 (3)(C) assault and robbery causing bodily injury as defined in
19 13 V.S.A. 608(c);

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

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

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

1 ~~(7)~~(G) kidnapping as defined in 13 V.S.A. § 2405;
2 ~~(8)~~(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
3 ~~(9)~~(I) maiming as defined in 13 V.S.A. § 2701;
4 ~~(10)~~(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
5 ~~(11)~~(K) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
6 ~~(12)~~(L) burglary into an occupied dwelling as defined in 13 V.S.A.
7 § 1201(c).

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

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

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

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

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

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

9 (2) ~~The~~ the extent and nature of the child's prior record of delinquency;

10 (3) ~~The~~ the nature of past treatment efforts and the nature of the child's
11 response to them;

12 (4) ~~Whether~~ whether the alleged offense was committed in an
13 aggressive, violent, premeditated, or willful manner;

14 (5) ~~The~~ the nature of any personal injuries resulting from or intended to
15 be caused by the alleged act;

16 (6) ~~The~~ the prospects for rehabilitation of the child by use of procedures,
17 services, and facilities available through juvenile proceedings; and

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

21 (e) A transfer under this section shall terminate the jurisdiction of the
22 Family Division of the Superior Court over the child only with respect to those

1 delinquent acts alleged in the petition with respect to which transfer was
2 sought.

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

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

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

20 (h) If a person who has not attained ~~the age of 16 years of age~~ the age of 16 years of age at the time of
21 the alleged offense has been prosecuted as an adult and is not convicted of one
22 of the acts listed in subsection (a) of this section but is convicted only of one or

1 more lesser offenses, jurisdiction shall be transferred to the Family Division of
2 the Superior Court for disposition. A conviction under this subsection shall be
3 considered an adjudication of delinquency and not a conviction of crime, and
4 the entire matter shall be treated as if it had remained in the Family Division
5 throughout. In case of an acquittal for a matter specified in this subsection and
6 in case of a transfer to the Family Division under this subsection, the Court
7 shall order the sealing of all applicable files and records of the Court, and such
8 order shall be carried out as provided in subsection 5119(e) of this title.

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

13 Sec. 5. 33 V.S.A. § 5281 is amended to read:

14 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

15 (a) A After transfer of a proceeding pursuant to section 5204 of this title, a
16 motion may be filed in the Criminal Division of the Superior Court requesting
17 that a defendant under 18 years of age in a criminal proceeding who had
18 attained the age of 10 years of age but not the age of 18 years of age at the time
19 the offense is alleged to have been committed be treated as a youthful offender.
20 The motion may be filed by the State's Attorney, the defendant, or the Court
21 on its own motion.

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1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on passage.