

Joint Legislative Justice Oversight Committee

June 17, 2016

Overview

- Committee charge
- Related legislation enacted in 2016
- Reports due

Committee Charge

2015 Act No. 58, § E.335

- Committee Membership
 - Ten legislative members appointed biennially:
 - Five House members, not all from the same party, appointed by the Speaker of the House; and
 - Five Senate members, not all from the same party, appointed by the Committee on Committees

Committee Charge

2015 Act No. 60, § 23

- Committee Powers & Duties
 - Oversee the VT Department of Corrections, including:
 - evaluating DOC strategic, operating, and capital plans;
 - overseeing Departmental policy; and
 - encouraging communication between DOC and administrative branch and criminal justice system.
 - Oversee statewide juvenile and criminal justice system, including:
 - evaluating statewide system of pretrial services, court diversion programs, and community justice center services;
 - evaluating consistency and cost efficiency of system;
 - ensuring the statutes reflect principles of restorative justice; and
 - reviewing timeliness of judicial proceedings.

2016 Legislative Interim Committee

Charge: Juvenile Jurisdiction

2016 Act No. 153, § 34 (H.95)

- Evaluate:
 - The fiscal implications of adjudicating all offenders aged 18-20 as juveniles (except those charged with a “Big 12” offense)
 - Options for housing 16 and 17 year old offenders serving a sentence for a “Big 12” offense
 - Resources necessary to expand the jurisdiction of the juvenile courts up to age 21
 - Resources necessary to expand youthful offender treatment up to age 24
- Consider whether the following would improve outcomes for youths in the justice system:
 - Creating an Office for Youth Justice with jurisdiction to coordinate supervision and services for youths adjudicated juvenile delinquents and youthful offenders up to age 25
 - expanding youthful offender status eligibility to offenders 24 and younger, while requiring 22-24 year old offenders to be under DOC supervision
 - State’s Attorneys should have the discretion to bring charges against 14 and 15 year olds alleged to have committed a “Big 12” offense in either the Criminal or Family Division of the Superior Court

2016 Legislative Interim Committee

Charge: Criminal Procedure

2016 Act No. 133, § 8 (H.858)

- Study:
 - how a criminal defendant's credit for time served is determined with respect to time that the defendant was in DOC custody on nonincarcerative status or conditions of release; and
 - when the name of an offender who has committed a qualifying offense is posted on the Internet Sex Offender Registry if the offender was in DOC custody on nonincarcerative status.

2016 Legislative Interim Committee

Charge: Gender Disparities

2016 Act No. 125, § 6 (S.212)

- Evaluate any disparities in sentencing and detainment by gender, including:
 - the average duration of detention for men and women; and
 - the percentage of sentences or detainments imposed for listed crimes and nonlisted crimes for men and women.
- Investigate whether the primary drivers for detention, such as lack of housing, substance abuse, and risk assessment results, differ for men and women.

Relevant Legislation Enacted in 2016

- Act 153 (H.95): An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court
- Act 125 (S.212): An act relating to court-approved absences from home detention and home confinement furlough
- Act 137 (S.116): An act relating to rights of offenders in the custody of the Department of Corrections
- Act 160 (H.878): An act relating to capital construction and State bonding budget adjustment
- Act 140 (S.171): An act relating to eligibility for pretrial risk assessment and needs screening
- Act 155 (H.533): An act relating to victims' rights and animal welfare
- Act 122 (S.10): An act relating to the State DNA database
- Act 167 (H.869): An act relating to judicial organization and operations

Juvenile Delinquency Statutes: Pre-H.95 Overview

- Currently the Family Division (FD) generally has exclusive jurisdiction over delinquency proceedings, subject to exceptions, until a child reaches 18.
- Exceptions:
 - For juveniles ages 10 to 13 who commit a “Big 12” offense, the proceeding starts in the FD and may be transferred up to the Criminal Division (CD).
 - Juveniles age 14 and over who commit a “Big 12” are charged in the CD, the proceeding may be transferred down to the FD.
 - Juveniles age 16 and over who commit something other than the “Big 12” can be charged in either the FD or the CD, and either Division may transfer.
- “Big 12” = arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, maiming, sexual assault, aggravated sexual assault, and burglary into an occupied dwelling.
- Youthful offender status: State’s Attorney, defendant, or Court may file a motion in the CD requesting that a juvenile under 18 be treated as a youthful offender. FD determines YO on a case-by-case basis.

Act 153 (H.95): An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court

- Makes incremental changes in how youth are adjudicated in Vermont:
 - July, 2016: 10-11 year olds charged with a Big 12 offense can only be charged and adjudicated in the Family Division.
 - January, 2017: 16 year olds who commit a misdemeanor or felony (not Big 12) must be charged in the FD. Misdemeanors shall be adjudicated in FD, but felony charges may be transferred to Criminal Division on motion.
 - January, 2018: 17 year olds are treated the same as 16 year olds.
 - July, 2018: extends youthful offender status from 17 year olds to 21 year olds.

Act 153 (H.95) Rollout: July 1, 2016

- A juvenile 12 or older who commits a Big 12 offense may be adjudicated in the CD; juveniles under 12 who commit a Big 12 offense shall be adjudicated in the FD.
- Broadens the authority of the Commissioner of DCF to include the ability to administer graduated sanctions as established by Department policy.
- Allows State's Attorney to refer a child to a community-based provider approved by DCF instead of filing a charge. If the provider does not accept the case or the child does not complete the program, the case returns to the State's Attorney for charging.
- Provides that if a juvenile violates the terms of probation, the FD may transfer supervision of the youth to the DOC with all the powers and authority of the DOC, including graduated sanctions and electronic monitoring.
- Provides that youths 14–16 who are charged with listed crimes must be arraigned within 24 hours of arrest.
- Expands the FD's jurisdiction to include proceedings involving misdemeanor motor vehicle offenses.
- Directs Agency of Education to explore the use of restorative justice practices regarding school climate, including truancy, bullying, harassment, and school discipline.

Act 153 (H.95) Rollout: January 1, 2017

- A youth 16 or younger charged with a misdemeanor shall be charged and adjudicated as a juvenile delinquent in the FD.
- A youth 16 or younger charged with a felony (not Big 12) shall be charged as a juvenile delinquent in the FD, but upon motion, the court may transfer the proceeding to the CD.
- The CD shall transfer any misdemeanor or felony (not Big 12) charge against a youth 16 or younger to the FD.
- The FD may transfer a juvenile delinquency petition to the CD if the child is 16 or 17 and is charged with a felony (not Big 12).
- If a youth 16 or older adjudicated as an adult was charged with a felony (not Big 12) but is convicted of a lesser included misdemeanor, the case shall be transferred to the FD for disposition and the conviction shall be treated as an adjudication of delinquency.

Act 153 (H.95) Rollout: January 1, 2018

- If a juvenile is 16 or 17 when he or she commits any offense for which he or she is adjudicated juvenile delinquent, the jurisdiction of the FD may be extended six months beyond his or her 19th birthday.
- A youth 17 or younger charged with a misdemeanor shall be charged and adjudicated as a juvenile delinquent in the FD.
- A youth 17 or younger charged with a felony (not Big 12) shall be charged as a juvenile delinquent in the FD, but upon motion, the court may transfer the proceeding to the CD.
- The CD shall transfer any misdemeanor or felony (not Big 12) charge against a youth 17 or younger to the FD.

Act 153 (H.95) Rollout: July 1, 2018

- Youthful offender proceedings in the FD can begin by a State's Attorney initiating a case there against a youth 16–21 years of age as a youthful offender. The proceeding can also commence by a transfer from the CD.
- Juveniles 12–21 years of age can move to be treated as youthful offenders in the FD.
- The requirement that a juvenile must enter a conditional plea of guilty in the CD prior to transferring to the FD for youthful offender status is eliminated. If the FD accepts the case for youthful offender status and the youth is adjudicated as a youthful offender, the court will create a criminal case that reflects the charge and conviction.

Act 125 (S.212): An act relating to court-approved absences from home detention and home confinement furlough

- Continues and expands the existing Windham County Electronic Monitoring Pilot Program, which is scheduled to sunset on June 30, 2016. The program permits the court to impose electronic monitoring as a condition of a defendant's release after consideration of:
 - The nature of the offense the defendant is charged with;
 - The defendant's prior convictions, history of violence and mental health needs, flight risk, history of supervision; and
 - Any risk or undue burden to other people in the community or risk to public safety posed by the defendant.
- Extends the Program for 2 more years, until June 30, 2018, and permits it to be expanded to other counties if the sheriff enters into a written agreement with the Windham County Sheriff. The DOC and the Department of States Attorney's and Sheriffs are required to enter into a memorandum of understanding for oversight and funding of the Program, and the Windham County Sheriff is required to establish written policies and procedures for the Program and submit them for approval to this Committee by June 30, 2016.
- Establishes more stringent requirements for authorized absences from the home confinement furlough program by offenders convicted of listed crimes.

Act 137 (S.116): An act relating to rights of offenders in the custody of the DOC

- Parole Board Independence. Parole Board is an independent body, and cannot be counseled by an AAG or attorney employed by the (DOC) at a pending parole revocation hearing. The Defender General must first be notified and given an opportunity to participate in any parole revocation training given by an AAG or attorney employed by the DOC.
- Presentence Investigation (PSI) Reports and Parole Summaries; Confidentiality and Access. Directs the court or Parole Board to permit the inspection of PSI reports and parole summaries by the State's Attorney and by the defendant or inmate or his or her attorney, redacted of information that may compromise the safety or confidentiality of any person.
- Inmate and Offender Records; Confidentiality and Access. Eliminates a requirement that a correctional facility supervisor maintain a "central file" for each inmate at the facility, repeals an existing provision that designates "inmate" files as confidential, and reenacts the confidentiality provision with substantial amendments in a new section of law. Extends confidentiality to also include records of "offenders"; specifies exceptions to the confidentiality of offender and inmate records; and directs the Commissioner of Corrections to adopt rules pursuant to the Administrative Procedure Act defining what are "offender and inmate records," designating which offender and inmate records will be accessible and to whom in accordance with standards established in the section, and establishing response and appeal periods and appeal rights in connection with a request by an offender or inmate to access records relating to him or her maintained by the DOC. The new section also clarifies the process for an offender or inmate to request correction of a material fact relating to him or her in a record maintained by the DOC and his or her right to appeal a denial of a correction request to Superior Court.
- Postconviction Relief. Requires that an inmate's factual contentions must have evidentiary support or be likely to have evidentiary support after reasonable opportunity for investigation and discovery in order to be entitled to public defender representation for postconviction relief.

Act 160 (H.878): An act relating to capital construction and State bonding budget adjustment

- Creates a Correctional Facility Planning Committee to develop a 20-year capital plan for, and an assessment of population needs at, State correctional facilities.
- Comprised of Commissioners of DOC, DCF, DAIL, BGS, Mental Health, the executive director of Vermont Crime Research Group, and the president of VSEA.

Act 140 (S.171): An act relating to eligibility for pretrial risk assessment and needs screening

- Expands the list of eligible participants to any person cited for a misdemeanor or felony offense (excluding drug trafficking)
- Clarifies that participation in the assessments or screenings, or both, is voluntary
- Requires that the results of the assessment or screening, or both, be sent to the defendant, his or her attorney, the prosecutor, and the court
- Clarifies the court's ability to order compliance with the provider's recommendations if a person elects to participate in an assessment or screening, or both
- Makes various technical amendments to distinguish between risk assessments and clinical assessments and a correction to an erroneous date

Act 155 (H.533): An act relating to victims' rights and animal welfare

- Adds “discharge or termination of probation” to the list of circumstances triggering the right of a victim to request notification before a defendant is released.
- Directs law enforcement to provide victims of listed crimes with information concerning bail or conditions of release imposed on the defendant prior to arraignment.
- Requires that victims be notified and given the opportunity to appear and be heard at a change of plea hearing in which the court is considering a deferred sentence.
- Creates a 16-member Animal Cruelty Investigation Advisory Board within the Department for Public Safety, tasked with exercising oversight over Vermont’s system for investigating and responding to animal cruelty complaints.

Act 122 (S.10): An act relating to the State DNA database

- Adds four misdemeanors to the list of offenses for which a DNA sample is required from a criminal offender after conviction: stalking, reckless endangerment, violation of an abuse prevention order, and abuse of a vulnerable adult.

Act 167 (H.869): An act relating to judicial organization and operations

- Authorizes the Administrative Judge to appoint a licensed Vermont lawyer to serve as a Judicial Master with the authority to hear and decide matters as a judge would in certain specified types of proceedings and cases.
- Authorizes the Supreme Court to by rule designate a region of no more than four counties (excluding Essex and Orleans Counties) to serve as a “regional venue” for proceedings involving the termination of parental rights.
- Provides that appeals in certain Licensing Board and Transportation Board matters are to be taken directly to the Vermont Supreme Court instead of to an intermediate body.
- Requires the Judiciary to discontinue use of its call center to respond to communications from Vermont attorneys by June 30, 2016.

Reports due to Committee

- Final policies and procedures for electronic monitoring program for Committee approval; report from Windham County Sheriff's Office; due June 30, 2016 (S.212).
- Feasibility of Animal Care Pilot Program in DOC; report from DOC Commissioner; due September 1, 2016 (H.533).
- Implications of adjudicating as youthful offenders all 18-20 year old defendants (except "Big 12" offenders); report from Commissioners of DCF and DOC; due November 1, 2016 (H.95).