

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 * * * Effective July 1, 2018 * * *

9 Sec. 1. 33 V.S.A. § 5280 is added to read:

10 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

11 PROCEEDINGS IN THE FAMILY DIVISION

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

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

14 (2) transfer to the Family Court of a proceeding from the Criminal

15 Division of the Superior Court as provided in section 5281 of this title.

16 (b) A State’s Attorney may commence a proceeding in the Family Division

17 of the Superior court concerning a child who is alleged to have committed an

18 offense after attaining 16 years of age, but not 22 years of age that could

19 otherwise be filed in the Criminal Division.

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

4 Sec. 2. 33 V.S.A. § 5281 is amended to read:

5 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

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

12 (b) Upon the filing of a motion under this section ~~and the entering of a~~
13 ~~conditional plea of guilty by the youth, the Criminal Division shall enter an~~
14 ~~order deferring the sentence and transferring the case to~~ or the filing of a
15 youthful offender petition pursuant to § 5280 of this title, the Family Division
16 ~~for~~ shall hold a hearing ~~on the motion~~ pursuant to § 5283 of this title. Copies
17 of all records relating to the case shall be forwarded to the Family Division.
18 Conditions of release and any Department of Corrections supervision or
19 custody shall remain in effect until the Family Division ~~approves the motion~~
20 accepts the case for treatment as a youthful offender and orders conditions of

1 juvenile probation pursuant to section 5284 of this title, or the case is otherwise
2 concluded.

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

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

13 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and
14 Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of
15 the motion for youthful offender treatment and any information related to the
16 youthful offender proceeding shall be inadmissible against the youth for any
17 purpose in the subsequent Criminal Division proceeding.

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

1 Sec. 3. 33 V.S.A. § 5282 is amended to read:

2 § 5282. REPORT FROM THE DEPARTMENT

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

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

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

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

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

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

1 Sec. 4. 33 V.S.A. § 5283 is amended to read:

2 § 5283. HEARING IN FAMILY DIVISION

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

6 (b) Notice. Notice of the hearing shall be provided to the State’s Attorney;
7 the youth; the youth’s parent, guardian, or custodian; the Department; and the
8 Department of Corrections.

9 (c) Hearing procedure.

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

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

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

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

4 Sec. 5. 33 V.S.A. § 5284 is amended to read:

5 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
6 ORDER

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

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

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

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

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

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

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

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

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

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

12 (d) The Department shall be responsible for supervision of and providing
13 services to the youth until he or she reaches ~~the age of 18~~ years of age. A lead
14 case manager shall be designated who shall have final decision-making
15 authority over the case plan and the provision of services to the youth. The
16 youth shall be eligible for appropriate community-based programming and
17 services provided by the Department.

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

1 ~~misdemeanor~~ and the child was 16 or 17 years old when he or she committed
2 the offense.

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

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

7 ~~(D) As used in this subdivision, "nonviolent misdemeanor" means a~~
8 ~~misdemeanor offense which is not a listed crime as defined in 13 V.S.A.~~
9 ~~§ 5301(7), an offense involving sexual exploitation of children in violation of~~
10 ~~13 V.S.A. chapter 64, or an offense involving violation of a protection order in~~
11 ~~violation of 13 V.S.A. § 1030.~~

12 (d) The Court may terminate its jurisdiction over a child prior to the child's
13 18th birthday by order of the Court. If the child is not subject to another
14 juvenile proceeding, jurisdiction shall terminate automatically in the following
15 circumstances:

16 (1) upon the discharge of a child from juvenile probation, providing the
17 child is not in the legal custody of the Commissioner;

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

20 (3) upon the adoption of a child following a termination of parental
21 rights proceeding.

1 Sec. 7. 33 V.S.A. § 5201 is amended to read:

2 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

6 (2) the filing of a delinquency petition by a State's Attorney.

7 (b) If the proceeding is commenced by transfer from another court, no
8 petition need be filed; however, the State's Attorney shall provide to the Court
9 the name and address of the child's custodial parent, guardian, or custodian
10 and the name and address of any noncustodial parent if known.

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

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

19 (e) Any proceeding concerning a child who is alleged to have committed a
20 felony offense other than those specified in subsection 5204(a) of this title
21 before attaining ~~17~~ 18 years of age shall originate in the Family Division of the

1 Superior Court provided that jurisdiction may be transferred in accordance
2 with this chapter.

3 * * *

4 Sec. 8. 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 January 1, 2017 * * *

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

6 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

10 (2) the filing of a delinquency petition by a State’s Attorney.

11 (b) If the proceeding is commenced by transfer from another court, no
12 petition need be filed; however, the State’s Attorney shall provide to the Court
13 the name and address of the child’s custodial parent, guardian, or custodian
14 and the name and address of any noncustodial parent if known.

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

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

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

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

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

17 Sec. 10. 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~~ 17 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~~ a misdemeanor, that
2 Court shall forthwith transfer the case to the Family Division of the Superior
3 Court under 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~~ 17 years of age
6 at the time ~~the~~ a felony offense charged not specified in subsection 5204(a) of
7 this title was alleged to have been committed, ~~or that the defendant had~~
8 ~~attained the age of 14 but not the age of 16 at the time an offense specified in~~
9 ~~subsection 5204(a) of this title was alleged to have been committed~~, that Court
10 ~~may~~ shall forthwith transfer the proceeding to the Family Division of the
11 Superior Court under the authority of this chapter, and the minor shall
12 thereupon be considered to be subject to this chapter as a child charged with a
13 delinquent act.

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

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

3 (d) ~~Any such~~ A transfer under 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 transfer, that court
6 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 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. 11. 33 V.S.A. § 5204 is amended to read:

17 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
18 COURT

19 (a) After a petition has been filed alleging delinquency, upon motion of the
20 State's Attorney and after hearing, the Family Division of the Superior Court
21 may transfer jurisdiction of the proceeding to the Criminal Division of the

1 Superior Court, if the child had attained 16 years of age but not 18 years of age
2 at the time the act was alleged to have occurred and the delinquent act set forth
3 in the petition ~~was not one of those specified in subdivisions (1)–(12) of this~~
4 ~~subsection~~ is a felony not specified in subdivisions (1)–(12) of this subsection
5 or if the child had attained 12 years of age but not 14 years of age at the time
6 the act was alleged to have occurred, and if the delinquent act set forth in the
7 petition was any of the following:

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

9 (2) assault and robbery with a dangerous weapon as defined in
10 13 V.S.A. § 608(b);

11 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
12 § 608(c);

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

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

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

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

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

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

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

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

1 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
2 § 1201(c).

3 * * *

4 (i) If a juvenile 16 years of age or older has been prosecuted as an adult for
5 an offense not listed in subsection (a) of this section and is not convicted of a
6 felony, but is convicted of a lesser included misdemeanor, jurisdiction shall be
7 transferred to the Family Division of the Superior Court for disposition. A
8 conviction under this subsection shall be considered an adjudication of
9 delinquency and not a conviction of a crime, and the entire matter shall be
10 treated as if it had remained in the Family Division throughout. In case of an
11 acquittal for a matter specified in this subsection and in case of a transfer to the
12 Family Division under this subsection, the court shall order the sealing of all
13 applicable files and records of the court, and such order shall be carried out as
14 provided in subsection 5119(e) of this title.

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

1 * * * Effective July 1, 2016 * * *

2 Sec. 12. 33 V.S.A. § 5204 is amended to read:

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

5 (a) After a petition has been filed alleging delinquency, upon motion of the
6 State’s Attorney and after hearing, the Family Division of the Superior Court
7 may transfer jurisdiction of the proceeding to the Criminal Division of the
8 Superior Court, if the child had attained ~~the age of 16~~ years of age but not ~~the~~
9 ~~age of 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 if the child had attained ~~the age of~~
12 ~~10~~ 12 years of age but not ~~the age of 14~~ years of age at the time the act was
13 alleged to have occurred, and if the delinquent act set forth in the petition was
14 any of the following:

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

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

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

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

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

- 1 (6) manslaughter as defined in 13 V.S.A. § 2304;
- 2 (7) kidnapping as defined in 13 V.S.A. § 2405;
- 3 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 4 (9) maiming as defined in 13 V.S.A. § 2701;
- 5 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 6 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- 7 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
- 8 § 1201(c).

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

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

- 20 (1) there is probable cause to believe that the child committed ~~an act~~
21 ~~listed in subsection (a) of this section~~ the charged offense; 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 * * *

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

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

19 * * *

1 Sec. 13. 33 V.S.A. § 5106 is amended to read:

2 § 5106. POWERS AND DUTIES OF COMMISSIONER

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

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

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

13 (3) To supervise and assist a child who is placed under the
14 Commissioner's supervision or in the Commissioner's legal custody by order
15 of the Court, and to administer sanctions in accordance with graduated
16 sanctions established by policy and that are consistent with the juvenile
17 probation certificate.

18 * * *

1 Sec. 14. 33 V.S.A. § 5225 is amended to read:

2 § 5225. PRELIMINARY HEARING; RISK ASSESSMENT

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

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

1 in the Family Division, the risk level result shall be provided to the child's
2 attorney. Except on agreement of the parties, the results shall not be provided
3 to the Court until after a merits finding has been made.

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

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

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

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

18 Sec. 15. 33 V.S.A. § 5285 is amended to read:

19 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

20 (a) If it appears that the youth has violated the terms of juvenile probation
21 ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion

1 for modification or revocation of youthful offender status may be filed in the
2 Family Division of the Superior Court. The Court shall set the motion for
3 hearing as soon as practicable. The hearing may be joined with a hearing on a
4 violation of conditions of probation under section 5265 of this title. A
5 supervising juvenile or adult probation officer may detain in an adult facility a
6 youthful offender who has attained ~~the age of 18~~ years of age for violating
7 conditions of probation.

8 (b) A hearing under this section shall be held in accordance with section
9 5268 of this title.

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

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

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

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

19 (d) If a youth's status as a youthful offender is revoked and the case is
20 returned to the Criminal Division under subdivision (c)(2) of this section, the
21 Court shall hold a sentencing hearing and impose sentence. When determining

1 an appropriate sentence, the Court may take into consideration the youth's
2 degree of progress toward rehabilitation while on youthful offender status.

3 The Criminal Division shall have access to all Family Division records of the
4 proceeding.

5 Sec. 16. 28 V.S.A. § 1101 is amended to read:

6 § 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
7 REGARDING JUVENILE SERVICES

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

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

13 * * *

14 Sec. 17. 33 V.S.A. § 5206 is added to read:

15 § 5206. CITATION OF 16- AND 17-YEAR-OLDS

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

20 (2) If, after the child is cited to the Family Division, the State's Attorney
21 chooses to file the charge in the Criminal Division of the Superior Court, the

1 State's Attorney shall state in the information the reason why filing in the
2 Criminal Division is in the interest of justice.

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

5 (1) 23 V.S.A. §§ 674 (driving while license suspended or revoked);
6 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

7 (2) Fish and wildlife offenses that are not minor violations as defined by
8 10 V.S.A. § 4572.

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

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

11 Sec. 18. 13 V.S.A. § 7554 is amended to read:

12 § 7554. RELEASE PRIOR TO TRIAL

13 * * *

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

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

2 § 33. JURISDICTION; FAMILY DIVISION

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

6 * * *

7 (b) The Family Division has nonexclusive jurisdiction to hear and dispose
8 of proceedings involving misdemeanor motor vehicle offenses filed or pending
9 on or after July 1, 2016, pursuant to 33 V.S.A. §§ 5201, 5203, and 5280. The
10 Family Division of the Superior Court shall forward a record of any conviction
11 for violation of a law related to motor vehicle traffic control, other than a
12 parking violation, to the Commissioner of Motor Vehicles pursuant to
13 23 V.S.A. § 1709.

14 Sec. 20. 33 V.S.A. § 5102 is amended to read:

15 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

16 * * *

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

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

1 Sec. 21. 33 V.S.A. § 5234 is amended to read:

2 § 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
3 INVOLVING A LISTED CRIME

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

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

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

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

16 (C) when a predispositional or dispositional court proceeding is
17 scheduled to take place and when a court proceeding of which he or she has
18 been notified will not take place as scheduled; and

19 ~~(2)(D) To be notified by the prosecutor's office as to whether~~
20 delinquency has been found and disposition has occurred, ~~including~~ and any
21 conditions ~~or~~ of release or conditions of probation that are related to the victim

1 or a member of the victim’s family or current household and any restitution
2 relevant to the victim, when ordered.

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

5 (3) To attend the disposition hearing and to present a victim’s victim
6 impact statement at the disposition hearing in accordance with subsection
7 5233(b) of this title, including testimony in support of his or her claim for
8 restitution pursuant to section 5235 of this title, and to be notified as to the
9 disposition pursuant to subsection 5233(d) of this title, including probation.

10 The court shall consider the victim’s statement when ordering disposition. The
11 victim shall not be personally present at any portion of the disposition hearing
12 except to present a victim impact statement or to testify in support of his or her
13 claim for restitution unless the court finds that the victim’s presence is
14 necessary in the interest of justice.

15 (4) Upon request, to be notified by the agency having custody of the
16 delinquent child before he or she is discharged from a secure or staff-secured
17 residential facility. The name of the facility shall not be disclosed. An
18 agency’s inability to give notification shall not preclude the release. However,
19 in such an event, the agency shall take reasonable steps to give notification of
20 the release as soon thereafter as practicable. Notification efforts shall be

1 deemed reasonable if the agency attempts to contact the victim at the address
2 or telephone number provided to the agency in the request for notification.

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

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

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

13 Sec. 22. 33 V.S.A. § 5234a is added to read:

14 § 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS

15 INVOLVING A NONLISTED CRIME

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

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

20 (A) his or her rights as provided by law, information regarding how a
21 delinquency proceeding is adjudicated, the confidential nature of juvenile

1 proceedings, and that it is unlawful to disclose confidential information
2 concerning the proceedings;

3 (B) when a delinquency petition is filed, and any conditions of
4 release initially ordered for the child or modified by the Court that relate to the
5 victim or a member of the victim's family or current household; and

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

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

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

15 (4) To attend the disposition hearing for the sole purpose of presenting
16 to the Court a victim impact statement, including testimony in support of his or
17 her claim for restitution pursuant to section 5235 of this title. The victim shall
18 not be personally present at any portion of the disposition hearing except to
19 present a victim impact statement or to testify in support of his or her claim for
20 restitution unless the Court finds that the victim's presence is necessary in the
21 interest of justice.

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

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

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

12 § 2666. MODIFICATION; TERMINATION

13 * * *

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

19 (1) Upon the death of the permanent guardian or when the permanent
20 guardianship is otherwise terminated by order of the Probate Division, the
21 Probate Division shall issue an order placing the child in the custody of the

1 Commissioner and shall immediately notify the Department for Children and
2 Families, the State’s Attorney, and the Family Division.

3 (2) The order transferring the child’s legal custody to the Commissioner
4 shall have the same legal effect as a similar order issued by the Family
5 Division under the authority of 33 V.S.A. chapters 51–53.

6 (3) After the Probate Division issues the order transferring legal custody
7 of the child, the State shall commence proceedings under the authority of
8 33 V.S.A. chapters 51–53 as if the child were abandoned.

9 * * *

10 Sec. 24. 14 V.S.A. § 2667 is amended to read:

11 § 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION;

12 IMMEDIATE HARM TO THE MINOR

13 (a) ~~The probate division of the superior court~~ Probate Division of the
14 Superior Court shall have exclusive jurisdiction to hear any action to enforce,
15 modify, or terminate the initial order issued by the ~~family division of the~~
16 ~~superior court~~ Family Division of the Superior Court for visitation, contact, or
17 information.

18 (b) Upon a showing by affidavit of immediate harm to the child, the
19 ~~probate division of the superior court~~ Probate Division of the Superior Court
20 may temporarily stay the order of visitation or contact on an ex parte basis
21 until a hearing can be held, or stay the order of permanent guardianship and

1 ~~assign parental rights and responsibilities~~ transfer legal custody of the child to
2 ~~the commissioner for children and families~~ Commissioner for Children and
3 Families.

4 (1) The order transferring the child’s legal custody to the Commissioner
5 shall have the same legal effect as a similar order issued by the Family
6 Division under the authority of 33 V.S.A. chapters 51–53.

7 (2) The Probate Division shall then immediately notify the Department
8 for Children and Families, the State’s Attorney, and the Family Division when
9 it has issued an order transferring the child’s legal custody to the
10 Commissioner, and nothing in this subsection shall prohibit the State from
11 commencing proceedings under 33 V.S.A. chapters 51–53.

12 * * *

13 Sec. 25. 33 V.S.A. § 5223 is amended to read:

14 § 5223. FILING OF PETITION

15 (a) When notice to the child is provided by citation, the State’s Attorney
16 shall file the petition and supporting affidavit at least 10 business days prior to
17 the date for the preliminary hearing specified in the citation.

18 (b) The Court shall send or deliver a copy of the petition and affidavit to
19 the Commissioner after a finding of probable cause. A copy of the petition and
20 affidavit shall be made available at the State’s Attorney’s office to all persons
21 required to receive notice, including the noncustodial parent, as soon as

1 possible after the petition is filed and at least five business days prior to the
2 date set for the preliminary hearing.

3 Sec. 26. 33 V.S.A. § 5229 is amended to read:

4 § 5229. MERITS ADJUDICATION

5 * * *

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

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

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

2 § 5230. DISPOSITION CASE PLAN

3 (a) Filing of case plan. ~~The~~ Following the finding by the Court that a child
4 is delinquent, the Department shall file a disposition case plan ~~no~~ not later than
5 ~~28 days from the date of the finding by the Court that a child is delinquent~~
6 seven business days before the scheduled disposition hearing. The disposition
7 case plan shall not be used or referred to as evidence prior to a finding that a
8 child is delinquent.

9 * * *

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

11 § 5315. MERITS ADJUDICATION

12 * * *

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

17 (g) If the Court finds that the allegations made in the petition have been
18 established based on the stipulation of the parties or on the evidence if the
19 merits are contested, the Court shall order the Department to prepare a
20 disposition case plan ~~within 28 days of the merits hearing and shall set the~~
21 ~~matter for a~~ not later than seven business days before a scheduled disposition

1 hearing. An adjudication pursuant to this subsection is not a final order subject
2 to appeal separate from the resulting disposition order.

3 * * *

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

5 § 5315a. MERITS STIPULATION

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

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

11 (1) the parties to the petition, as defined in subdivision 5102(22) of this
12 title, agree to the terms of the stipulation; and

13 (2) the court determines that:

14 (A) the agreement between the parties is voluntary;

15 (B) the parties to the agreement understand the nature of the
16 allegation; and

17 (C) the parties to the agreement understand the rights waived if the
18 court approves of and issues an order based upon the stipulation.

1 Sec. 30. 33 V.S.A. § 5316 is amended to read:

2 § 5316. DISPOSITION CASE PLAN

3 (a) ~~The Following a finding by the court that a child is in need of care or~~
4 supervision, the Department shall file a disposition case plan ordered pursuant
5 to subsection 5315(g) of this title ~~no~~ not later than ~~28 days from the date of the~~
6 ~~finding by the Court that a child is in need of care or supervision~~ seven
7 business days before the scheduled disposition hearing.

8 * * *

9 Sec. 31. 15 V.S.A. § 1103 is amended to read:

10 § 1103. REQUESTS FOR RELIEF

11 (a) Any family or household member may seek relief from abuse by
12 another family or household member on behalf of ~~him~~ him- or herself or his or
13 her children by filing a complaint under this chapter. A minor 16 years of age
14 or older, or a minor of any age who is in a dating relationship as defined in
15 §1101(2) of this chapter, may file a complaint under this chapter seeking relief
16 on his or her own behalf. The plaintiff shall submit an affidavit in support of
17 the order.

18 * * *

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

2 § 1104. EMERGENCY RELIEF

3 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
4 orders under this chapter may be issued ex parte, without notice to the
5 defendant, upon motion and findings by the Court that the defendant has
6 abused the plaintiff or his or her children, or both. The plaintiff shall submit an
7 affidavit in support of the order. A minor 16 years of age or older, or a minor
8 of any age who is in a dating relationship as defined in §1101(2) of this
9 chapter, may seek relief on his or her own behalf. Relief under this section
10 shall be limited as follows:

11 * * *

12 Sec. 33. DEPARTMENT OF CHILDREN AND FAMILIES; DEPARTMENT
13 OF CORRECTIONS; YOUTHFUL OFFENDERS; REPORT

14 The Commissioners for Children and Families and of Corrections shall
15 consider the implications of adjudicating as youthful offenders all defendants
16 who have attained 18 years of age, but not 21 years of age, who have not been
17 charged with an offense specified in 33 V.S.A. § 5204(a). The Commissioners
18 shall report their findings and any associated recommendations or proposed
19 legislation to the Joint Legislative Justice Oversight Committee on or before
20 November 1, 2016.

1 Sec. 34. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;

2 2016 LEGISLATIVE INTERIM

3 During the 2016 legislative interim, the Joint Legislative Justice Oversight
4 Committee shall:

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

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

12 (3) consider expanding youthful offender status eligibility to offenders
13 24 years of age and younger, while requiring offenders 22–24 years of age to
14 be under Department of Corrections supervision;

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

19 (5) explore options for housing offenders 16 and 17 years of age serving
20 a sentence for an offense specified in 33 V.S.A. § 5204(a);

1 (6) evaluate the resources necessary to expand the jurisdiction of the
2 juvenile courts for offenders 21 years of age and younger as contemplated by
3 other state legislatures; and

4 (7) evaluate the resources necessary to expand youthful offender
5 treatment for offenders 24 years of age and younger.

6 Sec. 35. AGENCY OF EDUCATION; RESTORATIVE JUSTICE

7 PRACTICES

8 The Agency of Education shall explore the use of restorative and similar
9 practices regarding school climate and culture, truancy, bullying and
10 harassment, and school discipline. The Agency shall consider the research that
11 demonstrates that restorative approaches lead to reductions in absenteeism,
12 suspensions, and expulsions and to improved educational outcomes.

13 Sec. 36. REPEAL

14 33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim's
15 statement at disposition) are repealed.

16 Sec. 37. EFFECTIVE DATES

17 (a) Secs. 9 (Commencement of Delinquency Proceedings), 10 (Transfer
18 from the Courts), and 11 (transfer from Family Division of the Superior Court)
19 shall take effect on January 1, 2017.

20 (b) Secs. 6 (Jurisdiction), 7 (commencement of delinquency proceedings),
21 and 8 (Transfer from other Courts) shall take effect on January 1, 2018.

1 (c) Secs. 1 (Commencement of Youthful Offender Proceedings in the
2 Family Division), 2 (Motion in Criminal Division of Superior Court), 3
3 (Report from the Department), 4 (Hearing in Family Division), and 5
4 (Youthful Offender Determination and Disposition Order) shall take effect on
5 July 1, 2018.

6 (d) The remaining sections shall take effect on July 1, 2016.

7

8 (Committee vote: _____)

9

10

Senator _____

11

FOR THE COMMITTEE