

1 TO THE HOUSE OF REPRESENTATIVES:

2 The House 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 bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

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

8 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

11 Proceedings under this chapter shall be commenced by:

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

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

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 ~~Repealed.~~

20 (c) ~~Consistent with applicable provisions of Title 4, any proceeding~~
21 ~~concerning a child who is alleged to have committed an act specified in~~

1 ~~subsection 5204(a) of this title after attaining the age of 14, but not the age of~~
2 ~~18, shall originate in the Criminal Division of the Superior Court, provided that~~
3 ~~jurisdiction may be transferred in accordance with this chapter. [Repealed.]~~

4 * * *

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

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

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. [Repealed.]~~

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. [Repealed.]~~

18 (c) **If it appears to the State's Attorney that the defendant was over the age**
19 **of 16 15 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**

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

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

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

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

12 ~~(2) if the child had attained the age of 10 15 years of age but not the age~~
13 ~~of 14 16 18 years of age at the time the act was alleged to have occurred; and if~~
14 ~~the 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;

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

10 (b) The State’s Attorney of the county where the juvenile petition is

11 pending may move in the Family Division of the Superior Court for an order

12 transferring jurisdiction under subsection (a) of this section at any time prior to

13 adjudication on the merits. The filing of the motion to transfer jurisdiction

14 shall automatically stay the time for the hearing provided for in section 5225 of

15 this title, which stay shall remain in effect until such time as the Family

16 Division of the Superior Court may deny the motion to transfer jurisdiction.

17 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)

18 of this section, the Family Division of the Superior Court shall conduct a

19 hearing in accordance with procedures specified in subchapter 2 of this chapter

20 to determine whether:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (i) 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.

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1 Sec. 5. 33 V.S.A. § 5233 is amended to read:

2 § 5233. VICTIM NOTIFICATION; VICTIM'S STATEMENT AT
3 DISPOSITION PROCEEDING; VICTIM NOTIFICATION

4 (a)(1) Upon the filing of a delinquency petition, the ~~Court~~ prosecutor shall:

5 (A) notify a victim of his or her rights as provided by law and his or
6 her responsibilities regarding the confidential nature of juvenile proceedings;
7 notify the victim of his or her rights the legal rights he or she has, including the
8 rights provided by subsection (b) of this section;

9 (B) provide the victim with information about how a delinquency
10 proceeding generally proceeds; and

11 (C) inform the victim that delinquency proceedings are confidential
12 and that it is unlawful for the victim to disclose confidential information to
13 other persons.

14 (2) The prosecutor shall keep the victim informed and consult with the
15 victim throughout the delinquency proceedings.

16 (b) A victim of a delinquent act has the right ~~in a disposition proceeding to~~
17 ~~file with the Court a written or recorded statement of the impact of the~~
18 ~~delinquent act on the victim and the need for restitution. A victim of a~~
19 ~~delinquent act involving a listed crime also has the right to be present at the~~
20 ~~disposition hearing for the sole purpose of presenting~~ and present to the Court
21 the impact of the delinquent act on the victim and the need for restitution. ~~A~~

1 ~~victim of a delinquent act that is not a listed crime may be present at the~~
2 ~~disposition hearing for the sole purpose of presenting to the Court the impact~~
3 ~~of the delinquent act on the victim and the need for restitution if the Court~~
4 ~~finds that the victim's presence at the disposition hearing is in the best interests~~
5 ~~of the child and the victim. The Court shall take a victim's views into~~
6 ~~consideration in the Court's disposition order. A victim shall not be allowed to~~
7 ~~be personally present at any portion of the disposition hearing except to present~~
8 ~~the impact statement unless authorized by the Court.~~

9 (c) After an adjudication of delinquency has been made ~~involving an act~~
10 ~~that is not a listed crime~~, the Court shall inform the victim of the disposition of
11 the case. ~~Upon request of the victim, the Court may release to the victim the~~
12 ~~identity of the child if the Court finds that release of the child's identity to the~~
13 ~~victim is in the best interests of both the child and the victim.~~

14 (d) ~~After an adjudication of delinquency has been made involving an act~~
15 ~~that is a listed crime, the State's Attorney's office shall inform the victim of the~~
16 ~~disposition in the case. Upon request of the victim, the State's Attorney's office~~
17 ~~shall release to the victim the identity of the child. [Repealed].~~

18 (e) For the purposes of this section, disposition in the case shall include
19 whether the child was placed on probation and information regarding
20 conditions of probation relevant to the victim.

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1 Sec. 6. 33 V.S.A. § 5234 is amended to read:

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

4 The victim in a delinquency proceeding involving a ~~listed crime~~ crimes
5 against a person shall have the following rights:

6 (1) To be notified by the prosecutor's office when a delinquency petition
7 is filed, including the identity of the juvenile and any conditions of release that
8 are materially related to the victim or intended to protect his or her safety.

9 ~~(2)~~(2) To be notified by the prosecutor's office in a timely manner when
10 a predispositional or dispositional court proceeding is scheduled to take place
11 and when a court proceeding of which he or she has been notified will not take
12 place as scheduled.

13 ~~(2)~~(3) To be notified by the prosecutor's office as to whether delinquency
14 has been found and disposition has occurred, including any conditions or
15 restitution relevant to the victim.

16 ~~(3)~~(4) To be present and provide a victim's impact statement at the
17 disposition hearing in accordance with subsection 5233(b) of this title,
18 including the need for restitution, and to be notified as to the disposition
19 pursuant to subsection 5233(d) of this title.

20 ~~(4)~~(5) Upon request, to be notified by the agency having custody of the
21 delinquent child before he or she is discharged from a secure or staff-secured

1 residential facility. ~~The name of the facility shall not be disclosed. An agency's~~
2 ~~inability to give notification shall not preclude the release. However, in such an~~
3 ~~event, the agency shall take reasonable steps to give notification of the release~~
4 ~~as soon thereafter as practicable. Notification efforts shall be deemed~~
5 ~~reasonable if the agency attempts to contact the victim at the address or~~
6 ~~telephone number provided to the agency in the request for notification. The~~
7 ~~notice shall include any conditions of release that are materially related to the~~
8 ~~victim or intended to protect his or her safety.~~

9 ~~(5)(6) To obtain the name of the child in accordance with sections 5226~~
10 ~~and 5233 of this title. [Repealed].~~

11 ~~(6)(7) To be notified by the Court of the victim's rights under this~~
12 ~~section.~~

13 Sec. 7. 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 18~~ 10 15 years of age but not ~~the age of 18~~ years of age at the
19 time the offense is alleged to have been committed be treated as a youthful
20 offender. The motion may be filed by the State's Attorney, the defendant, or
21 the Court on its own motion.

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Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE