

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

9 § 33. JURISDICTION; FAMILY DIVISION

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

13 * * *

14 (b) The Family Division has nonexclusive jurisdiction to hear and dispose
15 of proceedings involving misdemeanor motor vehicle offenses filed or pending
16 on or after July 1, 2016, pursuant to sections 5201, 5203, and 5280 of this title.
17 The Family Division of the Superior Court shall forward a record of any
18 conviction for violation of a law related to motor vehicle traffic control, other
19 than a parking violation, to the Commissioner of Motor Vehicles pursuant to
20 23 V.S.A. § 1709.

1 Sec. 2. 33 V.S.A. § 5102 is amended to read:

2 * * *

3 (27) "Victim" shall have the same meaning as in 13 V.S.A. § 5301(4).

4 (28) "Youth" shall mean a person who is the subject of a motion for
5 youthful offender status or who has been granted youthful offender status.

6 *Effective 2018*

7 Sec. 3. 33 V.S.A. § 5103 is amended to read:

8 § 5103. JURISDICTION

9 (a) The Family Division of the Superior Court shall have exclusive
10 jurisdiction over all proceedings concerning a child who is or who is alleged to
11 be a delinquent child or a child in need of care or supervision brought under
12 the authority of the juvenile judicial proceedings chapters, except as otherwise
13 provided in such chapters.

14 (b) Orders issued under the authority of the juvenile judicial proceedings
15 chapters shall take precedence over orders in other Family Division
16 proceedings and any order of another court of this State, to the extent they are
17 inconsistent. This section shall not apply to child support orders in a divorce,
18 parentage, or relief from abuse proceedings until a child support order has been
19 issued in the juvenile proceeding.

1 (c)(1) Except as otherwise provided by this title and by subdivision (2) of
2 this subsection, jurisdiction over a child shall not be extended beyond the
3 child's 18th birthday.

4 (2)(A) Jurisdiction over a child who has been adjudicated delinquent
5 may be extended until six months beyond the child's ~~18th~~ 19th birthday if ~~the~~
6 ~~offense for which the child has been adjudicated delinquent is a nonviolent~~
7 ~~misdemeanor and~~ the child was 16 or 17 years old when he or she committed
8 the offense.

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

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

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

18 (d) The Court may terminate its jurisdiction over a child prior to the child's
19 18th birthday by order of the Court. If the child is not subject to another
20 juvenile proceeding, jurisdiction shall terminate automatically in the following
21 circumstances:

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

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

5 (3) upon the adoption of a child following a termination of parental
6 rights proceeding.

7 *Effective 2016*

8 Sec. 4. 33 V.S.A. § 5201 is amended to read:

9 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

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

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

18 (c) ~~Consistent with applicable provisions of Title 4, any~~ Any proceeding
19 ~~concerning a child who is alleged to have committed an act a misdemeanor~~
20 ~~offense specified in subsection 5204(a) of this title after attaining the age of 14,~~
21 ~~but not the age of 18, shall originate in the Criminal Division of the Superior~~

1 ~~Court, before attaining the age of 17 shall originate in the Family Division of~~
2 ~~the Superior Court provided that jurisdiction may be transferred in accordance~~
3 ~~with this chapter.~~

4 *Effective 2017*

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

10 ~~(e) Any proceeding concerning a child who is alleged to have committed an~~
11 ~~offense specified in subsection 5204(a) after reaching the age of 16 may~~
12 ~~originate in either the Criminal Division of the Superior Court or the Family~~
13 ~~Division of the Superior Court provided that jurisdiction may be transferred in~~
14 ~~accordance with this chapter.~~

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

18 (e)(g) A petition may be withdrawn by the State's Attorney at any time
19 prior to the hearing thereon, in which event the child shall be returned to the
20 custodial parent, guardian, or custodian, the proceedings under this chapter

1 terminated, and all files and documents relating thereto sealed under section
2 5119 of this title.

3 *Effective 2018*

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

5 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

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

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

14 (c) Any proceeding concerning a child who is alleged to have committed a
15 misdemeanor offense before attaining the age of 1718 shall originate in the
16 Family Division of the Superior Court.

17 (d) Any proceeding concerning a child who is alleged to have committed a
18 felony offense other than those specified in section 5204(a) of this title before
19 reaching the age of 1718 shall originate in the Family Division of the Superior
20 Court provided that jurisdiction may be transferred in accordance with this
21 chapter.

1 ~~(e) Any proceeding concerning a child who is alleged to have committed an~~
2 ~~offense specified in subsection 5204(a) after reaching the age of 16 17 may~~
3 ~~originate in either the Criminal Division of the Superior Court or the Family~~
4 ~~Division of the Superior Court provided that jurisdiction may be transferred in~~
5 ~~accordance with this chapter.~~

6 * * *

7 *Effective 2016*

8 Sec. 6. 33 V.S.A. § 5203 is amended to read:

9 § 5203. TRANSFER FROM OTHER COURTS

10 (a) If it appears to a Criminal Division of the Superior Court that the
11 defendant was under the age of ~~16~~17 years at the time the offense charged was
12 alleged to have been committed and the offense charged is a misdemeanor ~~not~~
13 ~~one of those specified in subsection 5204(a) of this title~~, that Court shall
14 forthwith transfer the case to the Family Division of the Superior Court under
15 the authority of this chapter.

16 (b) If it appears to a Criminal Division of the Superior Court that the
17 defendant was over the age of 16 years and under the age of 18 years at the
18 time ~~the a felony~~ offense ~~charged~~ not specified in section 5204(a) of this title
19 ~~was alleged to have been committed, or that the defendant had attained the age~~
20 ~~of 14 but not the age of 16 at the time an offense specified in subsection~~
21 ~~5204(a) of this title was alleged to have been committed~~, that Court may

1 forthwith transfer the proceeding to the Family Division of the Superior Court
2 under the authority of this chapter, and the minor shall thereupon be considered
3 to be subject to this chapter as a child charged with a delinquent act.

4 (c) If it appears to the State's Attorney that the defendant was over the age
5 of 16 and under the age of 18 at the time the offense charged was alleged to
6 have been committed and the offense charged is not an offense specified in
7 subsection 5204(a) of this title, the State's Attorney may file charges in the
8 Family or Criminal Division of the Superior Court. If charges in such a matter
9 are filed in the Criminal Division of the Superior Court, the Criminal Division
10 of the Superior Court may forthwith transfer the proceeding to the Family
11 Division of the Superior Court under the authority of this chapter, and the
12 person shall thereupon be considered to be subject to this chapter as a child
13 charged with a delinquent act.

14 (d) A transfer under this section shall include a transfer and delivery of a
15 copy of the accusatory pleading and other papers, documents, and transcripts
16 of testimony relating to the case. Upon any such transfer, that court shall order
17 that the defendant be taken forthwith to a place of detention designated by the
18 Family Division of the Superior Court or to that court itself, or shall release the
19 child to the custody of his or her parent or guardian or other person legally
20 responsible for the child, to be brought before the Family Division of the
21 Superior Court at a time designated by that court. The Family Division of the

1 Superior Court shall then proceed as provided in this chapter as if a petition
2 alleging delinquency had been filed with the Court under section 5223 of this
3 title on the effective date of such transfer.

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

6 *Effective 2018*

7 Sec. 7. 33 V.S.A. § 5203 is amended to read:

8 § 5203. TRANSFER FROM OTHER COURTS

9 (a) If it appears to a Criminal Division of the Superior Court that the
10 defendant was under the age of ~~17~~18 years at the time the offense charged was
11 alleged to have been committed and the offense charged is a misdemeanor, that
12 Court shall forthwith transfer the case to the Family Division of the Superior
13 Court under the authority of this chapter.

14 (b) If it appears to a Criminal Division of the Superior Court that the
15 defendant was ~~over the age of 16 years and~~ under the age of 18 years at the
16 time a felony offense not listed in section 5204(a) of this title was alleged to
17 have been committed, that Court may forthwith transfer the proceeding to the
18 Family Division of the Superior Court under the authority of this chapter, and
19 the minor shall thereupon be considered to be subject to this chapter as a child
20 charged with a delinquent act.

1 (c) If it appears to the State's Attorney that the defendant was over the age
2 of 16 and under the age of 18 at the time the offense charged was alleged to
3 have been committed and the offense charged is an offense specified in
4 subsection 5204(a) of this title, the State's Attorney may file charges in the
5 Family or Criminal Division of the Superior Court. If charges in such a matter
6 are filed in the Criminal Division of the Superior Court, the Criminal Division
7 of the Superior Court may forthwith transfer the proceeding to the Family
8 Division of the Superior Court under the authority of this chapter, and the
9 person shall thereupon be considered to be subject to this chapter as a child
10 charged with a delinquent act.

11 * * *

12 *Effective 2016*

13 Sec. 8. 33 V.S.A. § 5204 is amended to read:

14 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
15 COURT

16 (a) After a petition has been filed alleging delinquency, upon motion of the
17 State's Attorney and after hearing, the Family Division of the Superior Court
18 may transfer jurisdiction of the proceeding to the Criminal Division of the
19 Superior Court, if the child had attained the age of 16 but not the age of 18 at
20 the time the act was alleged to have occurred and the delinquent act set forth in
21 the petition was not one of those specified in subdivisions (1)-(12) of this

1 subsection or if the child had attained the age of ~~10~~12 but not the age of 14 at
2 the time the act was alleged to have occurred, and if the delinquent act set forth
3 in the petition was any of the following:

- 4 (1) arson causing death as defined in 13 V.S.A. § 501;
- 5 (2) assault and robbery with a dangerous weapon as defined in 13
6 V.S.A. § 608(b);
- 7 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
8 608(c);
- 9 (4) aggravated assault as defined in 13 V.S.A. § 1024;
- 10 (5) murder as defined in 13 V.S.A. § 2301;
- 11 (6) manslaughter as defined in 13 V.S.A. § 2304;
- 12 (7) kidnapping as defined in 13 V.S.A. § 2405;
- 13 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 14 (9) maiming as defined in 13 V.S.A. § 2701;
- 15 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 16 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- 17 (12) burglary into an occupied dwelling as defined in 13 V.S.A. §
18 1201(c).

19 (b) The State's Attorney of the county where the juvenile petition is
20 pending may move in the Family Division of the Superior Court for an order
21 transferring jurisdiction under subsection (a) of this section at any time prior to

1 adjudication on the merits. The filing of the motion to transfer jurisdiction shall
2 automatically stay the time for the hearing provided for in section 5225 of this
3 title, which stay shall remain in effect until such time as the Family Division of
4 the Superior Court may deny the motion to transfer jurisdiction.

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

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

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

14 * * *

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

18 (h) If a person who has not attained the age of 16 at the time of the alleged
19 offense has been prosecuted as an adult and is not convicted of one of the acts
20 listed in subsection (a) of this section but is convicted only of one or more
21 lesser offenses, jurisdiction shall be transferred to the Family Division of the

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

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

19 (j) The record of a hearing conducted under subsection (c) of this section
20 and any related files shall be open to inspection only by persons specified in

1 subsections 5117(b) and (c) of this title in accordance with section 5119 of this
2 title and by the attorney for the child.

3 *Effective 2017*

4 Sec. 9. 33 V.S.A. § 5204 is amended to read:

5 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
6 COURT

7 (a) After a petition has been filed alleging delinquency, upon motion of the
8 State's Attorney and after hearing, the Family Division of the Superior Court
9 may transfer jurisdiction of the proceeding to the Criminal Division of the
10 Superior Court, if the child had attained the age of 16 but not the age of 18 at
11 the time the act was alleged to have occurred and the delinquent act set forth in
12 the petition ~~was not one of those specified in subdivisions (1)-(12) of this~~
13 ~~subsection is a felony not specified in subdivisions (1)-(12) of this subsection~~
14 or if the child had attained the age of 12 but not the age of 14 at the time the
15 act was alleged to have occurred, and if the delinquent act set forth in the
16 petition was any of the following:

- 17 (1) arson causing death as defined in 13 V.S.A. § 501;
18 (2) assault and robbery with a dangerous weapon as defined in 13
19 V.S.A. § 608(b);
20 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
21 608(c);

- 1 (4) aggravated assault as defined in 13 V.S.A. § 1024;
- 2 (5) murder as defined in 13 V.S.A. § 2301;
- 3 (6) manslaughter as defined in 13 V.S.A. § 2304;
- 4 (7) kidnapping as defined in 13 V.S.A. § 2405;
- 5 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 6 (9) maiming as defined in 13 V.S.A. § 2701;
- 7 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 8 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- 9 (12) burglary into an occupied dwelling as defined in 13 V.S.A. §
- 10 1201(c).

11 * * *

12 Sec. 10. 33 V.S.A. § 5206 is added to read:

13 § 5206. CITATION OF 16- AND 17-YEAR-OLDS

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

18 (2) If, after the child is cited to the Family Division, the State's Attorney
19 chooses to file the charge in the Criminal Division of the Superior Court, the
20 State's Attorney shall state in the information the reason why filing in the
21 Criminal Division is in the interest of justice.

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

3 (1) 23 V.S.A. §§ 674 (driving while license suspended or revoked);

4 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

5 (2) Fish and wildlife offenses that are not minor violations as defined by

6 10 V.S.A. § 4572.

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

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

9 Sec. 11. 33 V.S.A. § 5234 is amended to read:

10 § 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS

11 INVOLVING A LISTED CRIME

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

14 (1) To be notified by the prosecutor's office in a timely manner;

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

19 (B) his or her rights as provided by law, information regarding how a
20 case proceeds through a delinquency proceeding, the confidential nature of

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

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

6 ~~(2)(D) To be notified by the prosecutor's office as to whether~~
7 ~~delinquency has been found and disposition has occurred, including~~ and any
8 conditions of release or conditions of probation that are related to the victim
9 or a member of the victim's family or current household and any restitution
10 relevant to the victim, when ordered.

11 ~~(3)(2) To file with the Court a written or recorded statement of the~~
12 impact of the delinquent act on the victim and the need for restitution.

13 (3) To attend the disposition hearing and to present a victim's victim
14 impact statement, including testimony in support of his or her claim for
15 restitution pursuant to 33 V.S.A. § 5235, at the disposition hearing in
16 accordance with subsection 5233(b) of this title and to be notified as to the
17 disposition pursuant to subsection 5233(d) of this title , including probation.
18 The Court shall consider the victim's statement when ordering disposition.

19 The victim shall not be personally present at any portion of the disposition
20 hearing except to present a victim impact statement or to testify in support of

1 his or her claim for restitution unless the Court finds that the victim's presence
2 is necessary in the interest of justice.

3 (4) Upon request, to be notified by the agency having custody of the
4 delinquent child before he or she is discharged from a secure or staff-secured
5 residential facility. The name of the facility shall not be disclosed. An
6 agency's inability to give notification shall not preclude the release. However,
7 in such an event, the agency shall take reasonable steps to give notification of
8 the release as soon thereafter as practicable. Notification efforts shall be
9 deemed reasonable if the agency attempts to contact the victim at the address
10 or telephone number provided to the agency in the request for notification.

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

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

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

17 **Sec. 12. 33 V.S.A. § 5234a is added to read:**

18 **§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS**

19 **INVOLVING A NONLISTED CRIME**

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

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

2 (A) His or her rights as provided by law, information regarding how a
3 delinquency proceeding is adjudicated, the confidential nature of juvenile
4 proceedings, and that it is unlawful to disclose confidential information
5 concerning the proceedings.

6 (B) When a delinquency petition is filed, and any conditions of
7 release initially ordered for the child or modified by the Court that relate to the
8 victim or a member of the victim's family or current household. ~~Notification~~
9 ~~regarding conditions of release or conditions of probation shall include the~~
10 ~~child's name.~~

11 (C) When a dispositional court proceeding is scheduled to take place
12 and when a court proceeding of which he or she has been notified will not take
13 place as scheduled.

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

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

20 (c) To attend the disposition hearing for the sole purpose of presenting to
21 the Court a victim impact statement, including testimony in support of his or

1 her claim for restitution pursuant to 33 V.S.A. § 5235. The victim shall not be
2 personally present at any portion of the disposition hearing except to present a
3 victim impact statement or to testify in support of his or her claim for
4 restitution unless the Court finds that the victim's presence is necessary in the
5 interest of justice.

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

14 (e) The prosecutor's office shall keep the victim informed and consult with
15 the victim through the delinquency proceedings.

16 **Sec. 13. 33 V.S.A. § 5280 is added to read:**

17 **§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER**
18 **PROCEEDINGS**

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

20 **(1) the filing of a youthful offender petition by a State's Attorney; or**

1 (2) transfer to the Family Court of a proceeding from the Criminal
2 Division of the Superior Court as provided in § 5281 of this title.

3 (b) A State's Attorney may commence a proceeding in the Family Division
4 of the Superior court concerning a child who is alleged to have committed an
5 offense after attaining the age of 16, but not the age of 23.

6 Sec. 14. 33 V.S.A. § 5281 is amended to read:

7 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

8 (a) A motion may be filed in the Criminal Division of the Superior Court
9 requesting that a defendant under 18 22 years of age in a criminal proceeding
10 who had attained the age of 10 12 but not the age of 18 22 at the time the
11 offense is alleged to have been committed be treated as a youthful offender.

12 The motion may be filed by the State's Attorney, the defendant, or the Court on
13 its own motion.

14 * * *

15 Sec. 15. 33 V.S.A. § 5106 is amended to read:

16 § 5106. POWERS AND DUTIES OF COMMISSIONER

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

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

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

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

11 * * *

12 Sec. 16. 33 V.S.A. § 5225 is amended to read:

13 § 5225. PRELIMINARY HEARING; RISK ASSESSMENT

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

18 (b) Prior to the preliminary hearing, the child shall be afforded an
19 opportunity to undergo a risk and needs screening, which shall be conducted
20 by the Department or by a community provider that has contracted with the
21 Department to provide risk and need screenings for children alleged to have

1 committed delinquent acts. If the child participates in such a screening, the
2 Department or the community provider shall report the risk level result of the
3 screening to the State's Attorney. In lieu of filing a charge, the State's
4 Attorney may refer a child directly to a youth-appropriate community-based
5 provider that has been approved by the Department, which may include a
6 community justice center or a balanced and restorative justice program.
7 Referral to a community-based provider pursuant to this subdivision shall not
8 require the State's Attorney to file a charge. If the community-based provider
9 does not accept the case or if the child fails to complete the program in a
10 manner deemed satisfactory and timely by the provider, the child's case shall
11 return to the State's Attorney for charging consideration. If a charge is brought
12 in the Family Division, the risk level result shall be provided to the child's
13 attorney. Except on agreement of the parties, the results shall not be provided
14 to the Court until after a merits finding has been made.

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

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

20 (e) At the preliminary hearing, a denial shall be entered to the allegations of
21 the petition, unless the juvenile, after adequate consultation with the guardian

1 ad litem and counsel, enters an admission. If the juvenile enters an admission,
2 the disposition case plan required by section 5230 of this title may be waived
3 and the Court may proceed directly to disposition, provided that the juvenile,
4 the custodial parent, the State's Attorney, the guardian ad litem, and the
5 Department agree.

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

8 Sec. 17. 33 V.S.A. § 5285 is amended to read:

9 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

10 (a) If it appears that the youth has violated the terms of juvenile probation
11 ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion
12 for modification or revocation of youthful offender status may be filed in the
13 Family Division of the Superior Court. The Court shall set the motion for
14 hearing as soon as practicable. The hearing may be joined with a hearing on a
15 violation of conditions of probation under section 5265 of this title. A
16 supervising juvenile or adult probation officer may detain in an adult facility a
17 youthful offender who has attained the age of 18 for violating conditions of
18 probation.

19 (b) A hearing under this section shall be held in accordance with section
20 5268 of this title.

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

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

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

7 (3) transfer supervision of the youth to the Department of Corrections
8 with all of the powers and authority of the Department and the Commissioner
9 under title 28 including graduated sanctions and electronic monitoring.

10 (d) If a youth's status as a youthful offender is revoked and the case is
11 returned to the Criminal Division under subdivision (c)(2) of this section, the
12 Court shall hold a sentencing hearing and impose sentence. When determining
13 an appropriate sentence, the Court may take into consideration the youth's
14 degree of progress toward rehabilitation while on youthful offender status. The
15 Criminal Division shall have access to all Family Division records of the
16 proceeding.

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

18 * * *

19 (j) Any juvenile between the ages of 14 and 16 who is charged with a listed
20 crime as defined in subsection 5301(7) of this title shall appear before a

- 1 judicial officer and be ordered released pending trial in accordance with this
- 2 section within 24 hours juvenile's arrest.

DRAFT

1 Sec. 19. 28 V.S.A. § 1101 is amended to read:

2 § 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
3 REGARDING JUVENILE SERVICES

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

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

9 * * *

10 Sec. 20. JUVENILE JUSTICE UNIT; YOUTHFUL OFFENDERS

11 The Juvenile Justice Unit, in accordance with its duties under 33 V.S.A.
12 §5272(c)(4), shall consider the implications of adjudicating as youthful
13 offenders all defendants who have attained the age of 18, but not the age of 21,
14 who have not been charged with an offense specified in 33 V.S.A. § 5204(a).
15 The Unit shall report on its findings and any associated recommendations or
16 proposed legislation on or before January 15, 2017.

17 Sec. 21. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;
18 OFFICE OF YOUTH JUSTICE

19 During the 2016 legislative interim, the Joint Legislative Justice Oversight
20 Committee shall evaluate:

1 (1) the fiscal implications of adjudicating in the Family Division of the
2 Superior Court all offenders who have attained the age of 17, but not the age of
3 20, and who are not charged with an offense specified in 33 V.S.A. § 5204(a);

4 (2) whether the Juvenile Justice Unit should exist within the Department
5 for Children and Families, the Department of Corrections, or as a standalone
6 department;

7 (3) expanding youthful offender status eligibility to offenders aged 24
8 and younger, while requiring 22-24 year old offenders to be under Department
9 of Corrections supervision; and

10 (4) options for housing 16 and 17 year old offenders serving a sentence
11 for an offense specified in 33 V.S.A. § 5204(a).

12 Sec. 22. STATE BOARD OF EDUCATION; RESTORATIVE JUSTICE
13 PRACTICES

14 The State Board of Education shall develop a policy to promote the use of
15 restorative and similar practices regarding school climate, including bullying
16 and other forms of harassment, culture, truancy, and school discipline. The
17 Board shall consider the research that demonstrates that restorative and similar
18 approaches lead to reductions in absenteeism, suspensions, and expulsions, and
19 to improved educational outcomes. In developing the policy, the Board shall
20 collaborate with community restorative justice providers. The Board shall
21 provide a report, which shall include the policy, the process by which the

1 policy was developed, and policy implementation plans to the Joint Legislative
2 Justice Oversight Committee on or before November 1, 2016.

3 **FROM H.400**

4 Sec. X. 14 V.S.A. § 2666 is amended to read:

5 § 2666. MODIFICATION; TERMINATION

6 * * *

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

12 (1) Upon the death of the permanent guardian or when the permanent
13 guardianship is otherwise terminated by order of the Probate Division, the
14 Probate Division shall issue an order placing the child in the custody of the
15 Commissioner and shall immediately notify the Department for Children and
16 Families, the State's Attorney, and the Family Division.

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

1 (g) If, based on the child's admission or the evidence presented, the Court
2 finds beyond a reasonable doubt that the child has committed a delinquent act,
3 the Court shall order the Department to prepare a disposition case plan ~~within~~
4 ~~28 days of the merits adjudication and shall set the matter for a not later than~~
5 seven business days before the disposition hearing. In no event, shall a
6 disposition hearing be held later than 35 days after a finding that a child is
7 delinquent.

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

10 Sec. X. 33 V.S.A. § 5230 is amended to read:

11 § 5230. DISPOSITION CASE PLAN

12 (a) Filing of case plan. ~~The~~ Following the finding by the Court that a child
13 is delinquent, the Department shall file a disposition case plan ~~no~~ not later than
14 ~~28 days from the date of the finding by the Court that a child is delinquent~~
15 seven business days before the scheduled disposition hearing. The disposition
16 case plan shall not be used or referred to as evidence prior to a finding that a
17 child is delinquent.

18 * * *

19 Sec. X. 33 V.S.A. § 5315 is amended to read:

20 § 5315. MERITS ADJUDICATION

21 * * *

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

5 (g) If the Court finds that the allegations made in the petition have been
6 established based on the stipulation of the parties or on the evidence if the
7 merits are contested, the Court shall order the Department to prepare a
8 disposition case plan ~~within 28 days of the merits hearing and shall set the~~
9 ~~matter for a~~ not later than seven business days before a scheduled disposition
10 hearing. An adjudication pursuant to this subsection is not a final order subject
11 to appeal separate from the resulting disposition order.

12 * * *

13 Sec. X. 33 V.S.A. § 5315a is added to read:

14 § 5315a. MERITS STIPULATION

15 (a) At any time after the filing of the CHINS petition and prior to an order
16 of adjudication on the merits, the Court may approve a written stipulation to
17 the merits of the petition and any or all elements of the disposition plan,
18 including the permanency goal, placement, visitation, or services.

19 (b) The Court may approve a written stipulation if:

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

1 (2) the Court determines that:

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

3 (B) the parties to the agreement understand the nature of the
4 allegation; and

5 (C) the parties to the agreement understand the rights waived if the
6 Court approves of and issues an order based upon the stipulation.

7 Sec. X. 33 V.S.A. § 5316 is amended to read:

8 § 5316. DISPOSITION CASE PLAN

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

14 * * *

15 **FROM H.869**

16 * * * Petition and Affidavit in Delinquency Proceedings * * *

17 Sec. X. 33 V.S.A. § 5223 is amended to read:

18 § 5223. FILING OF PETITION

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

1 (b) ~~The Court shall send or deliver a~~ A copy of the petition and affidavit
2 shall be made available at the State's Attorney's office to all persons required
3 to receive notice, including the noncustodial parent, as soon as possible after
4 the petition is filed and at least five days prior to the date set for the
5 preliminary hearing.

6 Sec. X. REPEAL

7 33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim's
8 statement at disposition) are repealed.

9 Sec. X. EFFECTIVE DATES

10 (a) This section and Secs. X-X (H.400) of this act shall take effect on
11 passage.

12 (b) Secs. X (commencement of delinquency proceedings) and X (transfer
13 from Family Division of the Superior Court) of this act shall take effect on
14 January 1, 2017.

15 (c) Secs. X (Jurisdiction) and X (commencement of delinquency
16 proceedings) of this act shall take effect on January 1, 2018.

17 (d) The remaining sections of this act shall take effect on July 1, 2016.

18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE