

1 H.55

2 Introduced by Representatives Grad of Moretown, Colburn of Burlington,
3 Conquest of Newbury, Morris of Bennington, and Rachelson of
4 Burlington

5 Referred to Committee on

6 Date:

7 Subject: Criminal procedure; public defenders; right to representation; persons
8 at or under 25 years of age

9 Statement of purpose of bill as introduced: This bill proposes to require that a
10 public defender be appointed for any criminal or juvenile offense committed
11 by a person 25 years of age or less who meets the financial criteria for
12 appointment of counsel.

13 An act relating to appointing public defenders for accused persons 25 years
14 of age or less

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

16 Sec. 1. 13 V.S.A. § 5231 is amended to read:

17 § 5231. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES

18 (a) A needy person who is being detained by a law enforcement officer
19 without charge or judicial process, ~~or~~ who is charged with having committed or
20 is being detained under a conviction of a serious crime, or who is charged with

1 having committed or is being detained under a conviction of any criminal
2 offense if the person was 25 years of age or less at the time the alleged offense
3 was committed, is entitled:

4 (1) To be represented by an attorney to the same extent as a person
5 having his or her own counsel;~~and~~

6 (2) To be provided with the necessary services and facilities of
7 representation. Any such necessary services and facilities of representation
8 that exceed \$1,500.00 per item must receive prior approval from the court after
9 a hearing involving the parties. The court may conduct the hearing outside the
10 presence of the ~~state~~ State, but only to the extent necessary to preserve
11 privileged or confidential information. This obligation and requirement to
12 obtain prior court approval shall also be imposed in like manner upon the
13 ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's Attorney
14 prosecuting a violation of the law.

15 (b) The attorney, services and facilities, and court costs shall be provided at
16 public expense to the extent that the person, at the time the court determines
17 need, is unable to provide for the person's payment without undue hardship.

18 Sec. 2. 13 V.S.A. § 5232 is amended to read:

19 § 5232. PARTICULAR PROCEEDINGS

20 Counsel shall be assigned under section 5231 of this title to represent needy
21 persons in any of the following:

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(3) ~~Proceedings~~ For proceedings arising out of a petition brought in a juvenile court, including any subsequent proceedings arising from an order issued in the juvenile proceeding:

(A) the child; and

(B) when the court deems the interests of justice require representation, of either the child or his or her the child's parents or guardian, or both, including any subsequent proceedings arising from an order therein.

Sec. 3. 13 V.S.A. § 5234 is amended to read:

§ 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

(a) If a person who is being detained by a law enforcement officer without charge or judicial process, ~~or~~ who is charged with having committed or is being detained under a conviction of a serious crime, or who is charged with having committed or is being detained under a conviction of any criminal offense if the person was 25 years of age or less at the time the alleged offense was committed, is not represented by an attorney under conditions in which a person having his or her own counsel would be entitled to be so represented, the law enforcement officer, magistrate, or court concerned shall:

(1) Clearly inform him or her of the right of a person to be represented by an attorney and of a needy person to be represented at public expense; ~~and,~~

1 (2) If the person detained or charged does not have an attorney and does
2 not knowingly, voluntarily and intelligently waive his or her right to have an
3 attorney when detained or charged, notify the appropriate public defender that
4 he or she is not so represented. This shall be done upon commencement of
5 detention, formal charge, or post-conviction proceeding, as the case may be.

6 As used in this subsection, the term “commencement of detention” includes the
7 taking into custody of a probationer or parolee.

8 (b) Upon commencement of any later judicial proceeding relating to the
9 same matter, the presiding officer shall clearly inform the person so detained or
10 charged of the right of a needy person to be represented by an attorney at
11 public expense.

12 (c) Information given to a person by a law enforcement officer under this
13 section is effective only if it is communicated to a person in a manner meeting
14 standards under the ~~constitution~~ Constitution of the United States relating to
15 admissibility in evidence against him or her of statements of a detained person.

16 (d) Information meeting the standards of subsection (c) of this section and
17 given to a person by a law enforcement officer under this section gives rise to a
18 rebuttable presumption that the information was effectively communicated if:

19 (1) ~~It~~ it is in writing or otherwise recorded;

20 (2) ~~The~~ the recipient records his or her acknowledgment of receipt and
21 time of receipt of the information; and

1 (3) ~~The~~ the material so recorded under subdivisions (1) and (2) of this
2 subsection is filed with the court next concerned.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on July 1, 2017.