

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 234
3 entitled “An act relating to juvenile justice” respectfully reports that it has
4 considered the same and recommends that the bill be amended by striking out
5 all after the enacting clause and inserting in lieu thereof the following:

6 **Sec. 1. LEGISLATIVE FINDINGS**

7 (a) The General Assembly finds and declares as public policy that an
8 effective youth justice system: protects public safety; connects youths and
9 young adults to age-appropriate services that reduce the risk of reoffense; and,
10 when appropriate, shields youths from the adverse impact of a criminal record.

11 (b) In order to accomplish these goals, the system should be based on the
12 implementation of data-driven evidence-based practices that offer a broad
13 range of alternatives, such that the degree of intervention is commensurate
14 with the risk of reoffense.

15 (c) High-intensity interventions with low-risk offenders not only decrease
16 program effectiveness, but are contrary to the goal of public safety in that they
17 increase the risk of recidivism. An effective youth justice system includes pre-
18 charge options that keep low-risk offenders out of the criminal justice system
19 altogether.

* * * Expungement * * *

Sec. 2. 13 V.S.A. § 7609 is added to read:

§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
INDIVIDUAL 18-21 YEARS OF AGE

(a) Except as provided in subsection (b) of this section, the record of the criminal proceedings for an individual who was 18-21 years of age at the time the individual committed a qualifying crime shall be expunged within 30 days after the date on which the individual successfully completed the terms and conditions of the sentence for the conviction of the qualifying crime, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. A copy of the order shall be sent to each agency, department, or official named in the order. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such individual. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

(b) The Vermont Crime Information Center shall retain a special index of sentences for sex offenses that require registration pursuant to chapter 167, subchapter 3 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the

1 subject was convicted, and the docket number of the proceeding that was the
2 subject of the expungement. The special index shall be confidential and shall
3 be accessed only by the director of the Vermont Crime Information Center and
4 an individual designated for the purpose of providing information to the
5 Department of Corrections in the preparation of a presentence investigation in
6 accordance with 28 V.S.A. §§ 204 and 204a.

7 * * * Juvenile Delinquency Proceedings * * *

8 **Sec. 3. 33 V.S.A. § 5225 is amended to read:**

9 § 5225. PRELIMINARY HEARING; RISK ASSESSMENT

10 (a) Preliminary hearing. A preliminary hearing shall be held at the time
11 and date specified on the citation or as otherwise ordered by the court. If a
12 child is taken into custody prior to the preliminary hearing, the preliminary
13 hearing shall be at the time of the temporary care hearing. Counsel for the
14 child shall be assigned prior to the preliminary hearing.

15 (b) Risk and needs screening.

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

1 (2) If the child participates in such a screening, the Department or the
2 community provider shall report the risk level result of the screening, the
3 number and source of the collateral contacts made, and the recommendation
4 for charging or other alternatives to the State’s Attorney. The State’s Attorney
5 shall consider the results of the risk and needs screening in determining
6 whether to file a charge. In lieu of filing a charge, the State’s Attorney may
7 refer a child directly to a youth-appropriate community-based provider that has
8 been approved by the Department, which may include a community justice
9 center or a balanced and restorative justice program. Referral to a community-
10 based provider pursuant to this subsection shall not require the State’s Attorney
11 to file a charge. If the community-based provider does not accept the case or if
12 the child fails to complete the program in a manner deemed satisfactory and
13 timely by the provider, the child’s case shall return to the State’s Attorney for
14 charging consideration.

15 (3) If a charge is brought in the Family Division, the risk level result
16 shall be provided to the child’s attorney. Except on agreement of the parties,
17 the results shall not be provided to the court until after a merits finding has
18 been made.

19 (c) ~~Counsel for the child shall be assigned prior to the preliminary hearing.~~
20 Referral to diversion. Based on the results of the risk and needs screening, if a
21 child presents a low to moderate risk to reoffend, the State’s Attorney shall

1 refer the child directly to Court Diversion unless the State’s Attorney states on
2 the record why a referral to Court Diversion would not serve the ends of
3 justice. If the Court Diversion program does not accept the case or if the child
4 fails to complete the program in a manner deemed satisfactory and timely by
5 the provider, the child’s case shall return to the State’s Attorney for charging
6 consideration.

7 (d) Guardian ad litem. At the preliminary hearing, the court shall appoint a
8 guardian ad litem for the child. The guardian ad litem may be the child’s
9 parent, guardian, or custodian. On its own motion or motion by the child’s
10 attorney, the court may appoint a guardian ad litem other than a parent,
11 guardian, or custodian.

12 (e) Admission; denial. At the preliminary hearing, a denial shall be entered
13 to the allegations of the petition, unless the juvenile, after adequate
14 consultation with the guardian ad litem and counsel, enters an admission. If
15 the juvenile enters an admission, the disposition case plan required by section
16 5230 of this title may be waived and the court may proceed directly to
17 disposition, provided that the juvenile, the custodial parent, the State’s
18 Attorney, the guardian ad litem, and the Department agree.

19 (f) Conditions. The court may order the child to abide by conditions of
20 release pending a merits or disposition hearing.

1 Sec. 4. 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 18 years of age at the time the offense charged was
5 alleged to have been committed and the offense charged is ~~a misdemeanor, that~~
6 ~~court shall forthwith transfer the case to the Family Division of the Superior~~
7 ~~Court under the authority of this chapter~~ an offense not specified in subsection
8 5204(a) of this title, that court shall forthwith transfer the proceeding to the
9 Family Division of the Superior Court under the authority of this chapter, and
10 the minor shall then be considered to be subject to this chapter as a child
11 charged with a delinquent act.

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

1 minor shall then be considered to be subject to this chapter as a child charged
2 with a delinquent act.

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4 * * * Youthful Offender Proceedings * * *

5 **Sec. 5. 33 V.S.A. § 5280 is amended to read:**

6 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

7 PROCEEDINGS IN THE FAMILY DIVISION

8 (a) A proceeding under this chapter shall be commenced by:

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

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

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

12 (b) A State's Attorney may commence a proceeding in the Family Division
13 of the Superior Court concerning a child who is alleged to have committed an
14 offense after attaining 16 years of age but not 22 years of age that could
15 otherwise be filed in the Criminal Division.

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

19 (d) Within 15 days after the commencement of a youthful offender
20 proceeding pursuant to subsection (a) of this section, the youth shall complete
21 a risk and needs screening, which shall be conducted by the Department or by

1 a community provider that has contracted with the Department to provide risk
2 and needs screenings. The risk and needs screening shall be completed prior to
3 the youthful offender status hearing held pursuant to section 5283 of this title.
4 Unless the court extends the period for the risk and needs screening for good
5 cause shown, the Family Division shall reject the case for youthful offender
6 treatment if the youth does not complete the risk and needs screening within 15
7 days.

8 (1) The Department or the community provider shall report the risk level
9 result of the screening, the number and source of the collateral contacts made,
10 and the recommendation for charging or other alternatives to the State's
11 Attorney. Except on agreement of the parties, the results shall not be provided
12 to the court until after a merits finding has been made.

13 (2) Information related to the present alleged offense directly or
14 indirectly derived from the risk and needs screening or other conversation with
15 the Department or community-based provider shall not be used against the
16 youth in the youth's criminal or juvenile case for any purpose, including
17 impeachment or cross-examination. However, the fact of participation in risk
18 and needs screening may be used in subsequent proceedings.

19 (e) If a youth presents a low to moderate risk to reoffend based on the
20 results of the risk and needs screening, the State's Attorney shall refer a youth
21 directly to Court Diversion unless the State's Attorney states on the record at

1 the hearing held pursuant to section 5283 of this title why a referral would not
2 serve the ends of justice. If the Court Diversion program does not accept the
3 case or if the youth fails to complete the program in a manner deemed
4 satisfactory and timely by the provider, the youth's case shall return to the
5 State's Attorney for charging consideration.

6 **Sec. 6. 33 V.S.A. § 5282 is amended to read:**

7 § 5282. REPORT FROM THE DEPARTMENT

8 (a) Within 30 days after the ~~case is transferred to the Family Division or a~~
9 ~~youthful offender petition is filed in the Family Division,~~ youth has completed
10 the risk and needs screening pursuant to section 5280 of this title, unless the
11 court extends the period for good cause shown, the Department for Children
12 and Families shall file a report with the Family Division of the Superior Court.

13 * * *

14 **Sec. 7. 33 V.S.A. § 5801 is amended to read:**

15 § 5801. WOODSIDE JUVENILE REHABILITATION CENTER

16 (a) The Woodside Juvenile Rehabilitation Center in the town of Essex shall
17 be operated by the Department for Children and Families as a residential
18 treatment facility that provides in-patient psychiatric, mental health, and
19 substance abuse services in a secure setting for adolescents who have been
20 adjudicated or charged with a delinquency or criminal act.

21 (b) The total capacity of the facility shall not exceed 30 beds.

1 (c) The purpose or capacity of the Woodside Juvenile Rehabilitation Center
2 shall not be altered except by act of the General Assembly following a study
3 recommending any change of use by the Agency of Human Services.

4 (d) No person who has reached his or her 18th birthday may be placed at
5 Woodside. Notwithstanding any other provision of law, a person under ~~the age~~
6 of 18 years of age may be placed at Woodside, provided that he or she meets
7 the admissions criteria for treatment as established by the Department for
8 Children and Families. Any person already placed at Woodside may
9 voluntarily continue receiving treatment at Woodside beyond his or her 18th
10 birthday, provided that he or she continues to meet the criteria established by
11 the Department for continued treatment. The Commissioner shall ensure that a
12 child placed at Woodside has the same or equivalent due process rights as a
13 child placed at Woodside in its previous role as a detention facility ~~prior to the~~
14 ~~enactment of this act.~~

15 **Sec. 8. DEPARTMENT FOR CHILDREN AND FAMILIES; EXPANDING**

16 **JUVENILE JURISDICTION; REPORT**

17 The Department for Children and Families, in consultation with the
18 Department of State's Attorneys and Sheriffs, the Office of the Defender
19 General, and the Commissioner of Corrections, shall consider the implications
20 of adjudicating as juvenile delinquent or youthful offender all defendants up to
21 and including 21 years of age, excluding those defendants who have been

1 charged with an offense specified in 33 V.S.A. § 5204(a). The Department
2 shall report on the findings of the group, including necessary funding, and any
3 associated recommendations or proposed legislation to the Joint Legislative
4 Justice Oversight Committee on or before November 1, 2018.

5 Sec. 9. EFFECTIVE DATE

6 This act shall take effect on July 1, 2018.

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14 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE