

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 23
3 entitled “An act relating to juvenile jurisdiction” 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. 13 V.S.A. § 5401 is amended to read:

7 § 5401. DEFINITIONS

8 As used in this subchapter:

9 * * *

10 (15)(A) “Conviction” means a judgment of guilt following a verdict or
11 finding of guilt, a plea of guilty, a plea of nolo contendere, an Alford Plea, or a
12 judgment of guilt pursuant to a deferred sentence. A sex offender whose
13 sentence is deferred shall have no duty to register after successful completion
14 of the terms of the deferred sentence agreement for the duration specified in
15 the agreement.

16 (B) A sex offender treated as a youthful offender pursuant to
17 33 V.S.A. chapter 52A shall have no duty to register unless the offender’s
18 youthful offender status is revoked and he or she is sentenced for the offense in
19 the Criminal Division of Superior Court.

20 * * *

1 Sec. 2. 28 V.S.A. chapter 16 is added to read:

2 CHAPTER 16. YOUTHFUL OFFENDERS

3 § 1161. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER

4 REGARDING SUPERVISION OF YOUTHFUL OFFENDERS

5 In accordance with 33 V.S.A. chapter 52A, the Commissioner shall be
6 charged with the following powers and responsibilities regarding supervision
7 of youthful offenders:

8 (1) consistent with 33 V.S.A. § 5284(d), to designate a case manager
9 who, together with a case manager appointed by the Commissioner for
10 Children and Families, will determine the lead Department to preside over the
11 case plan and the provision of services to youths who are adjudicated as
12 youthful offenders;

13 (2) together with the Commissioner for Children and Families, to
14 maintain the general supervision of youths adjudicated as youthful offenders
15 and placed on conditions of juvenile probation; and

16 (3) to supervise the administration of probation services and establish
17 policies and standards regarding youthful offender probation investigation,
18 supervision, case work, record keeping, and the qualification of probation
19 officers working with youthful offenders.

1 § 1162. METHODS OF SUPERVISION

2 (a) Electronic monitoring. The Commissioner may utilize an electronic
3 monitoring system to supervise a youthful offender placed on juvenile
4 probation.

5 (b) Graduated sanctions.

6 (1) If ordered by the court pursuant to a modification of a youthful
7 offender disposition under 33 V.S.A. § 5285(c)(1), the Commissioner may
8 sanction the youthful offender in accordance with rules adopted pursuant to
9 subdivision (2) of this subsection.

10 (2) The Department of Corrections shall adopt rules pursuant to
11 3 V.S.A. chapter 25 that establish graduated sanction guidelines for a youthful
12 offender who violates the terms of his or her probation.

13 Sec. 3. 33 V.S.A. § 5102 is amended to read:

14 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

15 As used in the juvenile judicial proceedings chapters, unless the context
16 otherwise requires:

17 * * *

18 (2) “Child” means any of the following:

19 * * *

1 (C) An individual who has been alleged to have committed or has
2 committed an act of delinquency after becoming 10 years of age and prior to
3 becoming ~~18~~ 22 years of age; provided, however:

4 (i) that an individual who is alleged to have committed an act
5 specified in subsection 5204(a) of this title after attaining ~~the age of 10~~ 12
6 years of age but not ~~the age of 14~~ years of age may be treated as an adult as
7 provided therein;

8 * * *

9 (9) “Delinquent act” means an act designated a crime under the laws of
10 this State, or of another state if the act occurred in another state, or under
11 federal law. A delinquent act shall include 7 V.S.A. ~~§§ 656 and 657~~ § 656;
12 however, it shall not include:

13 (A) snowmobile offenses in 23 V.S.A. chapter 29, subchapter 1 and
14 motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations
15 of sections 3207a, 3207b, 3207c, 3207d, and 3323;

16 (B) pursuant to 4 V.S.A. § 33(b), felony motor vehicle offenses
17 committed by an individual who is ~~at least~~ 16 years of age or older, except for
18 violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091.

19 * * *

20 (22) “Party” includes the following persons:

21 (A) the child with respect to whom the proceedings are brought;

1 (B) the custodial parent, the guardian, or the custodian of the child in
2 all instances except a hearing on the merits of a delinquency petition;

3 (C) the noncustodial parent for the purposes of custody, visitation,
4 and such other issues ~~which~~ that the ~~Court~~ court may determine are proper and
5 necessary to the proceedings, provided that the noncustodial parent has entered
6 an appearance;

7 (D) the State's Attorney;

8 (E) the Commissioner for Children and Families;

9 (F) such other persons as appear to the ~~Court~~ court to be proper and
10 necessary to the proceedings; and

11 (G) in youthful offender cases brought under 33 V.S.A. chapter 52A,
12 the Commissioner of Corrections.

13 * * *

14 Sec. 4. 33 V.S.A. chapter 52A is added to read:

15 CHAPTER 52A. YOUTHFUL OFFENDERS

16 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

17 PROCEEDINGS IN THE FAMILY DIVISION

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

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

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

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

1 (b) A State’s Attorney may commence a proceeding in the Family Division
2 of the Superior Court concerning a child who is alleged to have committed an
3 offense after attaining 16 years of age, but not 22 years of age that could
4 otherwise be filed in the Criminal Division.

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

8 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

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

15 (b) Upon the filing of a motion under this section or the filing of a youthful
16 offender petition pursuant to section 5280 of this title, the Family Division
17 shall hold a hearing pursuant to section 5283 of this title. Copies of all records
18 relating to the case shall be forwarded to the Family Division. Conditions of
19 release and any Department of Corrections supervision or custody shall remain
20 in effect until the Family Division accepts the case for treatment as a youthful

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

3 (c)(1) If the Family Division rejects the case for youthful offender
4 treatment pursuant to subsection 5284 of this title, the case shall be transferred
5 to the Criminal Division. The conditions of release imposed by the Criminal
6 Division shall remain in effect, and the case shall proceed as though the motion
7 for youthful offender treatment or youthful offender petition had not been
8 filed.

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

14 (d) If the Family Division accepts the case for youthful offender treatment,
15 the case shall proceed to a confidential merits hearing or admission pursuant to
16 sections 5227-5229 of this title.

17 § 5282. REPORT FROM THE DEPARTMENT

18 (a) Within 30 days after the case is transferred to the Family Division or a
19 youthful offender petition is filed in the Family Division, unless the court
20 extends the period for good cause shown, the Department for Children and
21 Families shall file a report with the Family Division of the Superior Court.

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

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

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

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

10 (c) A report filed pursuant to this section is privileged and shall not be
11 disclosed to any person other than the Department, the Court, the State’s
12 Attorney, the youth, the youth’s attorney, the youth’s guardian ad litem, the
13 Department of Corrections, or any other person when the Court determines that
14 the best interests of the youth would make such a disclosure desirable or
15 helpful.

16 § 5283. HEARING IN FAMILY DIVISION

17 (a) Timeline. A youthful offender status hearing shall be held no later than
18 35 days after the transfer of the case from the Criminal Division or filing of a
19 youthful offender petition in the Family Division.

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

4 (c) Hearing procedure.

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

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

12 (d) Burden of proof. The burden of proof shall be on the moving party to
13 prove by a preponderance of the evidence that a child should be granted
14 youthful offender status. If the court makes the motion, the burden shall be on
15 the youth.

16 (e) Further hearing. On its own motion or the motion of a party, the court
17 may schedule a further hearing to obtain reports or other information necessary
18 for the appropriate disposition of the case.

1 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION

2 ORDER

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

11 (b)(1) The court shall deny the motion if the court finds that:

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

14 (B) there are insufficient services in the juvenile court system and the
15 Department for Children and Families and the Department of Corrections to
16 meet the youth's treatment and rehabilitation needs.

17 (2) The court shall grant the motion if the court finds that:

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

1 (B) there are sufficient services in the juvenile court system and the
2 Department for Children and Families and the Department of Corrections to
3 meet the youth’s treatment and rehabilitation needs.

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

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

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

11 (d) The Department for Children and Families and the Department of
12 Corrections shall be responsible for supervision of and providing services to
13 the youth until he or she reaches 22 years of age. Both Departments shall
14 designate a case manager who together shall appoint a lead Department to have
15 final decision-making authority over the case plan and the provision of services
16 to the youth. The youth shall be eligible for appropriate community-based
17 programming and services provided by both Departments.

18 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

19 (a) If it appears that the youth has violated the terms of juvenile probation
20 ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion
21 for modification or revocation of youthful offender status may be filed in the

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

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

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

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

13 (2) revoke the youth's status as a youthful offender and transfer the case
14 with a record of the petition, affidavit, adjudication, disposition, and revocation
15 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 transferred to the Criminal Division pursuant to subdivision (c)(2) of this
21 section, the court shall hold a sentencing hearing and impose sentence. When

1 determining an appropriate sentence, the court may take into consideration the
2 youth's degree of progress toward rehabilitation while on youthful offender
3 status. The Criminal Division shall have access to all Family Division records
4 of the proceeding.

5 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

6 (a) If a youth is adjudicated as a youthful offender prior to reaching 18
7 years of age, the Family Division shall review the youth's case before he or she
8 reaches 18 years of age and set a hearing to determine whether the court's
9 jurisdiction over the youth should be continued past 18 years of age. The
10 hearing may be joined with a motion to terminate youthful offender status
11 under section 5285 of this title. The court shall provide notice and an
12 opportunity to be heard at the hearing to the State's Attorney, the youth, the
13 Department for Children and Families, and the Department of Corrections.

14 (b) After receiving a notice of review under this section, the State may file
15 a motion to modify or revoke pursuant to section 5285 of this title. If such a
16 motion is filed, it shall be consolidated with the review under this section and
17 all options provided for under section 5285 of this title shall be available to the
18 court.

19 (c) The following reports shall be filed with the court prior to the hearing:

20 (1) The Department for Children and Families and the Department of
21 Corrections shall jointly report their recommendations, with supporting

1 justifications, as to whether the Family Division should continue jurisdiction
2 over the youth past 18 years of age and, if continued jurisdiction is
3 recommended, propose a case plan for the youth to ensure compliance with
4 and completion of the juvenile disposition.

5 (2) If the Departments recommend continued supervision of the youthful
6 offender past 18 years of age, the Departments shall report on the services
7 which would be available for the youth.

8 (d) If the court finds that it is in the best interest of the youth and consistent
9 with community safety to continue the case past 18 years of age, it shall make
10 an order continuing the court’s jurisdiction up to 22 years of age. The
11 Department for Children and Families and the Department of Corrections shall
12 jointly develop a case plan for the youth and coordinate services and share
13 information to ensure compliance with and completion of the juvenile
14 disposition.

15 (e) If the court finds that it is not in the best interest of the youth to
16 continue the case past 18 years of age, it shall terminate the disposition order,
17 discharge the youth, and dismiss the case in accordance with subsection
18 5287(c) of this title.

19 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

20 (a) A motion may be filed at any time in the Family Division requesting
21 that the court terminate the youth’s status as a youthful offender and discharge

1 him or her from probation. The motion may be filed by the State’s Attorney,
2 the youth, the Department, or the court on its own motion. The court shall set
3 the motion for hearing and provide notice and an opportunity to be heard at the
4 hearing to the State’s Attorney, the youth, the Department for Children and
5 Families and the Department of Corrections.

6 (b) In determining whether a youth has successfully completed the terms of
7 probation, the Court shall consider:

8 (1) the degree to which the youth fulfilled the terms of the case plan and
9 the probation order;

10 (2) the youth’s performance during treatment;

11 (3) reports of treatment personnel; and

12 (4) any other relevant facts associated with the youth’s behavior.

13 (c) If the court finds that the youth has successfully completed the terms of
14 the probation order, it shall terminate youthful offender status, discharge the
15 youth from probation, and file a written order dismissing the Family Division
16 case. The Family Division shall provide notice of the dismissal to the Criminal
17 Division, which shall dismiss the criminal case.

18 (d) Upon discharge and dismissal under subsection (c) of this section, all
19 records relating to the case in the Criminal Division shall be expunged, and all
20 records relating to the case in the Family Court shall be sealed pursuant to
21 section 5119 of this title.

1 (e) If the court denies the motion to discharge the youth from probation, the
2 court may extend or amend the probation order as it deems necessary.

3 § 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER

4 PROCEEDINGS

5 (a) The victim in a proceeding involving a youthful offender shall have the
6 following rights:

7 (1) to be notified by the prosecutor in a timely manner when a court
8 proceeding is scheduled to take place and when a court proceeding to which he
9 or she has been notified will not take place as scheduled;

10 (2) to be present during all court proceedings subject to the provisions of
11 Rule 615 of the Vermont Rules of Evidence and to express reasonably his or
12 her views concerning the offense and the youth;

13 (3) to request notification by the agency having custody of the youth
14 before the youth is released from a residential facility;

15 (4) to be notified by the prosecutor as to the final disposition of the case;

16 (5) to be notified by the prosecutor of the victim's rights under this
17 section.

18 (b) In accordance with court rules, at a hearing on a motion for youthful
19 offender treatment, the court shall ask if the victim is present and, if so,
20 whether the victim would like to be heard regarding disposition. In ordering
21 disposition, the court shall consider any views offered at the hearing by the

1 victim. If the victim is not present, the court shall ask whether the victim has
2 expressed, either orally or in writing, views regarding disposition and shall
3 take those views into consideration in ordering disposition.

4 (c) No youthful offender proceeding shall be delayed or voided by reason
5 of the failure to give the victim the required notice or the failure of the victim
6 to appear.

7 (d) As used in this section, “victim” shall have the same meaning as in
8 13 V.S.A. § 5301(4).

9 Sec. 5. 33 V.S.A. § 5291 is amended to read:

10 § 5291. DETENTION OR TREATMENT OF MINORS CHARGED AS

11 DELINQUENTS IN SECURE FACILITIES FOR THE DETENTION

12 OR TREATMENT OF DELINQUENT CHILDREN

13 ~~(a) Unless ordered otherwise at or after a temporary care hearing, the~~
14 ~~Commissioner shall have sole authority to place the child who is in the custody~~
15 ~~of the Department in a secure facility for the detention or treatment of minors.~~

16 ~~(b) Upon a finding at the temporary care hearing that no other suitable~~
17 ~~placement is available and the child presents a risk of injury to him or herself,~~
18 ~~to others, or to property, the Court may order that the child be placed in~~
19 Prior
20 to disposition, the court shall have the sole authority to place a child who is in
21 the custody of the Department in a secure facility used for the detention or
treatment of delinquent children until the Commissioner determines that a

1 suitable placement is available for the child. The court shall not order
2 placement in a secure facility without a recommendation from the Department
3 that placement in a secure facility is necessary. Alternatively, the Court may
4 order that the child be placed in a secure facility used for the detention or
5 treatment of delinquent children for up to seven days. Any order for placement
6 at a secure facility shall expire at the end of the seventh day following its
7 issuance unless, after hearing, the Court extends the order for a time period not
8 to exceed seven days. The court order shall include a finding that no other
9 suitable placement is available and the child presents a risk of injury to others
10 or to property.

11 (b) Absent good cause shown and notwithstanding section 5227 of this
12 title, when a child is placed in a secure facility pursuant to subsection (a) of
13 this section and remains in a secure facility for 45 days following the
14 preliminary hearing, the merits hearing shall be held and merits adjudicated
15 within 45 days of the date of the preliminary hearing or the court shall dismiss
16 the petition with prejudice. If merits have been found, the court shall review
17 the secure facility placement order at the merits hearing.

18 (c) If a child is placed in a secure facility pursuant to subsection (a) of this
19 section and secure facility placement continues following the merits hearing
20 review pursuant to subsection (b) of this section, the court shall, within 35 days
21 of the merits adjudication:

1 (1) hold the disposition hearing, or, if disposition is not held within
2 35 days;

3 (2) hold a hearing to review the continued secure facility placement.

4 (d) A child placed in a secure facility on an order pursuant to subsections
5 (a), (b), or (c) of this section with a finding that no other suitable placement is
6 available and the child presents a risk of harm to others or to property shall be
7 entitled to an independent, second evidentiary hearing, which shall be a
8 hearing de novo by a single justice of the Vermont Supreme Court. The Chief
9 Justice may make an appointment or special assignment in accordance with
10 4 V.S.A. § 22 to conduct the de novo hearing required by this subsection.
11 Unless the parties stipulate to the admission of portions of the trial court
12 record, the de novo review shall be a new evidentiary hearing without regard to
13 the record compiled before the trial court.

14 (e) Following disposition, the Commissioner shall have the sole authority
15 to place a child who is in the custody of the Department in a secure facility for
16 the detention or treatment of delinquent children pursuant to the Department's
17 administrative policies on admission.

18 Sec. 6. ADVISORY COMMITTEES; RULEMAKING

19 The Advisory Committee on Rules for Family Proceedings and the
20 Advisory Committee on Rules of Criminal Procedure shall jointly review the
21 youthful offender proceedings statutes and adopt procedural rules to make

1 clear that a youth is waiving the right to trial by jury in cases where a youth is
2 adjudicated in the Family Division pursuant to 33 V.S.A. §§ 5281, and 5227-
3 5229, youthful offender status is revoked, and a criminal record of the petition,
4 adjudication, disposition and revocation is sent to the Criminal Division
5 pursuant to 33 V.S.A. §5285 for sentencing. The Committees shall hold their
6 first joint meeting on or before July 1, 2017 and shall adopt rules on this topic
7 and any other youthful offender topic as deemed appropriate by the committees
8 effective no later than July 1, 2018.

9 Sec. 7. REPEALS

10 (a) 33 V.S.A. § 5104 (retention of jurisdiction over youthful offenders) is
11 repealed on July 1, 2018.

12 (b) 33 V.S.A. § 5280 (commencement of youthful offender proceedings in
13 the Family Division) is repealed on July 1, 2018.

14 (c) 33 V.S.A. § 5281 (motion in Criminal Division of Superior Court) is
15 repealed on July 1, 2018.

16 (d) 33 V.S.A. § 5282 (report from the Department) is repealed on July 1,
17 2018.

18 (e) 33 V.S.A. § 5283 (hearing in Family Division) is repealed on July 1,
19 2018.

20 (f) 33 V.S.A. § 5284 (determination and order) is repealed on July 1, 2018.

1 (g) 33 V.S.A. § 5285 (modification or revocation of disposition) is repealed
2 on July 1, 2018.

3 (h) 33 V.S.A. § 5286 (review prior to the age of 18) is repealed on July 1,
4 2018.

5 (i) 33 V.S.A. § 5287 (termination or continuance of probation) is repealed
6 on July 1, 2018.

7 (j) 33 V.S.A. § 5288 (rights of victims in youthful offender proceedings) is
8 repealed on July 1, 2018.

9 Sec. 8. EFFECTIVE DATES

10 This act shall take effect on July 1, 2017, except for Secs. 2 (powers and
11 responsibilities of the Commissioner regarding youthful offenders), 4 (youthful
12 offenders), and 5 (detention or treatment of minors charged as delinquents in
13 secure facilities for the detention or treatment of delinquent children) which
14 shall take effect on July 1, 2018.

15

16 (Committee vote: _____)

17

18

Senator _____

19

FOR THE COMMITTEE