

1 TO THE HOUSE OF REPRESENTATIVES:

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 House propose to the Senate that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 5401 is amended to read:

8 § 5401. DEFINITIONS

9 As used in this subchapter:

10 \* \* \*

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

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

21 \* \* \*

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 (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. § 5112 is amended to read:

15 § 5112. ATTORNEY AND GUARDIAN AD LITEM FOR CHILD

16 (a) The Court shall appoint an attorney for a child who is a party to a  
17 proceeding brought under the juvenile judicial proceedings chapters.

18 (b) The Court shall appoint a guardian ad litem for a child under 18 years  
19 of age who is a party to a proceeding brought under the juvenile judicial  
20 proceedings chapters. In a delinquency proceeding, a parent, guardian, or  
21 custodian of the child may serve as a guardian ad litem for the child, providing

1 his or her interests do not conflict with the interests of the child. The guardian  
2 ad litem appointed under this section shall not be a party to that proceeding or  
3 an employee or representative of such party.

4 Sec. 5. 33 V.S.A. chapter 52A is added to read:

5 CHAPTER 52A. YOUTHFUL OFFENDERS

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  
18 this title.

19 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

20 (a) A motion may be filed in the Criminal Division of the Superior Court  
21 requesting that a defendant under 22 years of age in a criminal proceeding who

1 had attained 12 years of age but not 22 years of age at the time the offense is  
2 alleged to have been committed be treated as a youthful offender. The motion  
3 may be filed by the State’s Attorney, the defendant, or the court on its own  
4 motion.

5 (b) Upon the filing of a motion under this section or the filing of a youthful  
6 offender petition pursuant to section 5280 of this title, the Family Division  
7 shall hold a hearing pursuant to section 5283 of this title. Pursuant to section  
8 5110 of this title, the hearing shall be confidential. Copies of all records  
9 relating to the case shall be forwarded to the Family Division. Conditions of  
10 release and any Department of Corrections supervision or custody shall remain  
11 in effect until the Family Division accepts the case for treatment as a youthful  
12 offender and orders conditions of juvenile probation pursuant to section 5284  
13 of this title, or the case is otherwise concluded.

14 (c)(1) If the Family Division rejects the case for youthful offender  
15 treatment pursuant to subsection 5284 of this title, the case shall be transferred  
16 to the Criminal Division. The conditions of release imposed by the Criminal  
17 Division shall remain in effect, and the case shall proceed as though the motion  
18 for youthful offender treatment or youthful offender petition had not been  
19 filed.

20 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and  
21 Rule 410 of the Vermont Rules of Evidence, the Family Division’s denial of

1 the motion for youthful offender treatment and any information related to the  
2 youthful offender proceeding shall be inadmissible against the youth for any  
3 purpose in the subsequent Criminal Division proceeding.

4 (d) If the Family Division accepts the case for youthful offender treatment,  
5 the case shall proceed to a confidential merits hearing or admission pursuant to  
6 sections 5227–5229 of this title.

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, unless the court  
10 extends the period for good cause shown, the Department for Children and  
11 Families shall file a report with the Family Division of the Superior Court.

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

14 (1) a recommendation as to whether diversion is appropriate for the  
15 youth because the youth is a low to moderate risk to reoffend;

16 (2) a recommendation as to whether youthful offender status is  
17 appropriate for the youth; and

18 (3) a description of the services that may be available for the youth.

19 (c) A report filed pursuant to this section is privileged and shall not be  
20 disclosed to any person other than:

21 (1) the Department;

1           (2) the court;

2           (3) the State’s Attorney;

3           (4) the youth, the youth’s attorney, and the youth’s guardian ad litem;

4           (5) the youth’s parent, guardian, or custodian if the youth is under

5           18 years of age, unless the court finds that disclosure would be contrary to the

6           best interest of the child;

7           (6) the Department of Corrections; or

8           (7) any other person when the court determines that the best interests of

9           the youth would make such a disclosure desirable or helpful.

10       § 5283. HEARING IN FAMILY DIVISION

11       (a) Timeline. A youthful offender status hearing shall be held no later than

12       35 days after the transfer of the case from the Criminal Division or filing of a

13       youthful offender petition in the Family Division.

14       (b) Notice. Notice of the hearing shall be provided to the State’s Attorney;

15       the youth; the youth’s parent, guardian, or custodian; the Department; and the

16       Department of Corrections.

17       (c) Hearing procedure.

18       (1) If the motion is contested, all parties shall have the right to present

19       evidence and examine witnesses. Hearsay may be admitted and may be relied

20       on to the extent of its probative value. If reports are admitted, the parties shall

1 be afforded an opportunity to examine those persons making the reports, but  
2 sources of confidential information need not be disclosed.

3 (2) All youthful offender proceedings shall be confidential.

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

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

11 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION

12 ORDER

13 (a) In a hearing on a motion for youthful offender status, the court shall  
14 first consider whether public safety will be protected by treating the youth as a  
15 youthful offender. If the court finds that public safety will not be protected by  
16 treating the youth as a youthful offender, the court shall deny the motion and  
17 transfer the case to the Criminal Division of the Superior Court pursuant to  
18 subsection 5281(d) of this title. If the court finds that public safety will be  
19 protected by treating the youth as a youthful offender, the court shall proceed  
20 to make a determination under subsection (b) of this section.

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

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

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

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

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

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

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

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

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

19           (d) The Department for Children and Families and the Department of  
20 Corrections shall be responsible for supervision of and providing services to  
21 the youth until he or she reaches 22 years of age. Both Departments shall

1 designate a case manager who together shall appoint a lead Department to have  
2 final decision-making authority over the case plan and the provision of services  
3 to the youth. The youth shall be eligible for appropriate community-based  
4 programming and services provided by both Departments.

5 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

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

15 (b) A hearing under this section shall be held in accordance with section  
16 5268 of this title.

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

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

1           (2) revoke the youth’s status as a youthful offender and transfer the case  
2           with a record of the petition, affidavit, adjudication, disposition, and revocation  
3           to the Criminal Division for sentencing; or

4           (3) transfer supervision of the youth to the Department of Corrections  
5           with all of the powers and authority of the Department and the Commissioner  
6           under Title 28, including graduated sanctions and electronic monitoring.

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

14           § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

15           (a) If a youth is adjudicated as a youthful offender prior to reaching  
16           18 years of age, the Family Division shall review the youth’s case before he or  
17           she reaches 18 years of age and set a hearing to determine whether the court’s  
18           jurisdiction over the youth should be continued past 18 years of age. The  
19           hearing may be joined with a motion to terminate youthful offender status  
20           under section 5285 of this title. The court shall provide notice and an

1 opportunity to be heard at the hearing to the State’s Attorney, the youth, the  
2 Department for Children and Families, and the Department of Corrections.

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

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

9 (1) The Department for Children and Families and the Department of  
10 Corrections shall jointly report their recommendations, with supporting  
11 justifications, as to whether the Family Division should continue jurisdiction  
12 over the youth past 18 years of age and, if continued jurisdiction is  
13 recommended, propose a case plan for the youth to ensure compliance with  
14 and completion of the juvenile disposition.

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

18 (d) If the court finds that it is in the best interest of the youth and consistent  
19 with community safety to continue the case past 18 years of age, it shall make  
20 an order continuing the court’s jurisdiction up to 22 years of age. The  
21 Department for Children and Families and the Department of Corrections shall

1 jointly develop a case plan for the youth and coordinate services and share  
2 information to ensure compliance with and completion of the juvenile  
3 disposition.

4 (e) If the court finds that it is not in the best interest of the youth to  
5 continue the case past 18 years of age, it shall terminate the disposition order,  
6 discharge the youth, and dismiss the case in accordance with subsection  
7 5287(c) of this title.

8 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

9 (a) A motion may be filed at any time in the Family Division requesting  
10 that the court terminate the youth's status as a youthful offender and discharge  
11 him or her from probation. The motion may be filed by the State's Attorney,  
12 the youth, the Department, or the court on its own motion. The court shall set  
13 the motion for hearing and provide notice and an opportunity to be heard at the  
14 hearing to the State's Attorney, the youth, the Department for Children and  
15 Families and the Department of Corrections.

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

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

20 (2) the youth's performance during treatment;

21 (3) reports of treatment personnel; and

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

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

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

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

13           § 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER

14                   PROCEEDINGS

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

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

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

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

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

7           (5) to be notified by the prosecutor of the victim’s rights under this  
8           section.

9           (b) In accordance with court rules, at a hearing on a motion for youthful  
10          offender treatment, the court shall ask if the victim is present and, if so,  
11          whether the victim would like to be heard regarding disposition. In ordering  
12          disposition, the court shall consider any views offered at the hearing by the  
13          victim. If the victim is not present, the court shall ask whether the victim has  
14          expressed, either orally or in writing, views regarding disposition and shall  
15          take those views into consideration in ordering disposition.

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

19          (d) As used in this section, “victim” shall have the same meaning as in  
20          13 V.S.A. § 5301(4).

1 Sec. 6. 33 V.S.A. § 5291 is amended to read:

2 § 5291. DETENTION OR TREATMENT OF MINORS CHARGED AS  
3 DELINQUENTS IN SECURE FACILITIES FOR THE  
4 DETENTION OR TREATMENT OF DELINQUENT CHILDREN

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

8 ~~(b) Upon a finding at the temporary care hearing that no other suitable~~  
9 ~~placement is available and the child presents a risk of injury to him or herself,~~  
10 ~~to others, or to property, the Court may order that the child be placed in Prior~~  
11 ~~to disposition, the court shall have the sole authority to place a child who is in~~  
12 ~~the custody of the Department in a secure facility used for the detention or~~  
13 ~~treatment of delinquent children until the Commissioner determines that a~~  
14 ~~suitable placement is available for the child. The court shall not order~~  
15 ~~placement in a secure facility without a recommendation from the Department~~  
16 ~~that placement in a secure facility is necessary. Alternatively, the Court may~~  
17 ~~order that the child be placed in a secure facility used for the detention or~~  
18 ~~treatment of delinquent children for up to seven days. Any order for placement~~  
19 ~~at a secure facility shall expire at the end of the seventh day following its~~  
20 ~~issuance unless, after hearing, the Court extends the order for a time period not~~  
21 ~~to exceed seven days. The court order shall include a finding that no other~~

1 suitable placement is available and the child presents a risk of injury to others  
2 or to property.

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

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

14 (1) hold the disposition hearing, or, if disposition is not held within  
15 35 days;

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

17 (d) A child placed in a secure facility on an order pursuant to subsections  
18 (a), (b), or (c) of this section with a finding that no other suitable placement is  
19 available and the child presents a risk of harm to others or to property shall be  
20 entitled to an independent, second evidentiary hearing, which shall be a  
21 hearing de novo by a single justice of the Vermont Supreme Court. The Chief

1 Justice may make an appointment or special assignment in accordance with  
2 4 V.S.A. § 22 to conduct the de novo hearing required by this subsection.  
3 Unless the parties stipulate to the admission of portions of the trial court  
4 record, the de novo review shall be a new evidentiary hearing without regard to  
5 the record compiled before the trial court.

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

10 Sec. 7. VERMONT SUPREME COURT; RULEMAKING

11 The Vermont Supreme Court shall review the youthful offender  
12 proceedings statutes and consider a proposed new or amended rule for  
13 adoption on or before July 1, 2018 to make clear that a youth is waiving the  
14 right to trial by jury in cases where a youth is adjudicated in the Family  
15 Division pursuant to 33 V.S.A. §§ 5281 and 5227–5229, youthful offender  
16 status is revoked, and a criminal record of the petition, adjudication,  
17 disposition and revocation is sent to the Criminal Division pursuant to  
18 33 V.S.A. §5285 for sentencing.

19 Sec. 8. REPEALS

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

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

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

5        (d) 33 V.S.A. § 5282 (report from the Department) is repealed on July 1,  
6        2018.

7        (e) 33 V.S.A. § 5283 (hearing in Family Division) is repealed on July 1,  
8        2018.

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

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

12       (h) 33 V.S.A. § 5286 (review prior to the age of 18) is repealed on July 1,  
13       2018.

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

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

18       Sec. 8. EFFECTIVE DATES

19       This act shall take effect on July 1, 2017, except for Secs. 2 (Chapter 16),  
20       5 (Chapter 52A), and 6 (detention or treatment of minors charged as

1 delinquents in secure facilities for the detention or treatment of delinquent  
2 children) which shall take effect on July 1, 2018.

3

4

5 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

7

Representative \_\_\_\_\_

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FOR THE COMMITTEE