

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 * * * Findings * * *

7 Sec. 1. 33 V.S.A. § 5101 is amended to read:

8 § 5101. LEGISLATIVE FINDINGS AND PURPOSES

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

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

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

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(d) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

(1) to provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters;

(2) to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which ensure:

(A) balanced attention to the protection of the community;

(B) accountability to victims and the community for offenses; and

(C) the development of competencies to enable children to become responsible and productive members of the community;

(3) to preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety;

(4) to ensure that safety and timely permanency for children are the paramount concerns in the administration and conduct of proceedings under the juvenile judicial proceedings chapters;

1 (5) to achieve the foregoing purposes, whenever possible, in a family
2 environment, recognizing the importance of positive parent-child relationships
3 to the well-being and development of children;

4 (6) to provide judicial proceedings through which the provisions of the
5 juvenile judicial proceedings chapters are executed and enforced and in which
6 the parties are ensured a fair hearing, and that their constitutional and other
7 legal rights are recognized and enforced.

8 ~~(b)~~(e) The provisions of the juvenile judicial proceedings chapters shall be
9 construed as superseding the provisions of the criminal law of this State to the
10 extent the same are inconsistent with this chapter.

11 * * * Expungement * * *

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

13 § 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
14 INDIVIDUAL 18-21 YEARS OF AGE

15 (a) Procedure. Except as provided in subsection (b) of this section, the
16 record of the criminal proceedings for an individual who was 18-21 years of
17 age at the time the individual committed a qualifying crime shall be expunged
18 within 30 days after the date on which the individual successfully completed
19 the terms and conditions of the sentence for the conviction of the qualifying
20 crime, absent a finding of good cause by the court. The court shall issue an
21 order to expunge all records and files related to the arrest, citation,

1 investigation, charge, adjudication of guilt, criminal proceedings, and
2 probation related to the sentence. A copy of the order shall be sent to each
3 agency, department, or official named in the order. Thereafter, the court, law
4 enforcement officers, agencies, and departments shall reply to any request for
5 information that no record exists with respect to such individual.

6 Notwithstanding this subsection, the record shall not be expunged until
7 restitution has been paid in full.

8 (b) Exceptions.

9 (1) A criminal record that includes both qualifying and non-qualifying
10 offenses shall not be eligible for expungement pursuant to this section.

11 (2) The Vermont Crime Information Center shall retain a special index
12 of sentences for sex offenses that require registration pursuant to chapter 167,
13 subchapter 3 of this title. This index shall only list the name and date of birth
14 of the subject of the expunged files and records, the offense for which the
15 subject was convicted, and the docket number of the proceeding that was the
16 subject of the expungement. The special index shall be confidential and shall
17 be accessed only by the director of the Vermont Crime Information Center and
18 an individual designated for the purpose of providing information to the
19 Department of Corrections in the preparation of a presentence investigation in
20 accordance with 28 V.S.A. §§ 204 and 204a.

1 been approved by the Department, which may include a community justice
2 center or a balanced and restorative justice program. Referral to a community-
3 based provider pursuant to this subsection shall not require the State’s Attorney
4 to file a charge. If the community-based provider does not accept the case or if
5 the child fails to complete the program in a manner deemed satisfactory and
6 timely by the provider, the child’s case shall return to the State’s Attorney for
7 charging consideration.

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

12 (c) ~~Counsel for the child shall be assigned prior to the preliminary hearing.~~
13 Referral to diversion. Based on the results of the risk and needs screening, if a
14 child presents a low to moderate risk to reoffend, the State’s Attorney shall
15 refer the child directly to Court Diversion unless the State’s Attorney states on
16 the record why a referral to Court Diversion would not serve the ends of
17 justice. If the Court Diversion program does not accept the case or if the child
18 fails to complete the program in a manner deemed satisfactory and timely by
19 the provider, the child’s case shall return to the State’s Attorney for charging
20 consideration.

1 (d) Guardian ad litem. At the preliminary hearing, the court shall appoint a
2 guardian ad litem for the child. The guardian ad litem may be the child's
3 parent, guardian, or custodian. On its own motion or motion by the child's
4 attorney, the court may appoint a guardian ad litem other than a parent,
5 guardian, or custodian.

6 (e) Admission; denial. At the preliminary hearing, a denial shall be entered
7 to the allegations of the petition, unless the juvenile, after adequate
8 consultation with the guardian ad litem and counsel, enters an admission. If
9 the juvenile enters an admission, the disposition case plan required by section
10 5230 of this title may be waived and the court may proceed directly to
11 disposition, provided that the juvenile, the custodial parent, the State's
12 Attorney, the guardian ad litem, and the Department agree.

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

15 Sec. 4. 33 V.S.A. § 5203 is amended to read:

16 § 5203. TRANSFER FROM OTHER COURTS

17 (a) If it appears to a Criminal Division of the Superior Court that the
18 defendant was under 18 years of age at the time the offense charged was
19 alleged to have been committed and the offense charged is ~~a misdemeanor, that~~
20 ~~court shall forthwith transfer the case to the Family Division of the Superior~~
21 ~~Court under the authority of this chapter~~ an offense not specified in subsection

1 5204(a) of this title, that court shall forthwith transfer the proceeding to the
2 Family Division of the Superior Court under the authority of this chapter, and
3 the minor shall then be considered to be subject to this chapter as a child
4 charged with a delinquent act.

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

17 * * *

1 Unless the court extends the period for the risk and needs screening for good
2 cause shown, the Family Division shall reject the case for youthful offender
3 treatment if the youth does not complete the risk and needs screening within
4 15 days.

5 (1) The Department or the community provider shall report the risk level
6 result of the screening, the number and source of the collateral contacts made,
7 and the recommendation for charging or other alternatives to the State's
8 Attorney.

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

15 (e) If a youth presents a low to moderate risk to reoffend based on the
16 results of the risk and needs screening, the State's Attorney shall refer a youth
17 directly to Court Diversion unless the State's Attorney states on the record at
18 the hearing held pursuant to section 5283 of this title why a referral would not
19 serve the ends of justice. If the Court Diversion program does not accept the
20 case or if the youth fails to complete the program in a manner deemed

1 satisfactory and timely by the provider, the youth's case shall return to the
2 State's Attorney for charging consideration.

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

4 § 5282. REPORT FROM THE DEPARTMENT

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

10 * * *

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

12 § 5801. WOODSIDE JUVENILE REHABILITATION CENTER

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

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

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

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

12 Sec. 8. DEPARTMENT FOR CHILDREN AND FAMILIES; EXPANDING
13 JUVENILE JURISDICTION; REPORT

14 The Department for Children and Families, in consultation with the
15 Department of State's Attorneys and Sheriffs, the Office of the Defender
16 General, the Court Administrator, and the Commissioner of Corrections, shall:
17 (1) consider the implications of expanding juvenile jurisdiction under 33
18 V.S.A. chapters 52 and 52a to encompass 18 and 19 year olds beginning in
19 fiscal year 2021;

1 (d) Any proceeding concerning a child who is alleged to have committed a
2 ~~misdemeanor~~ any offense other than those specified in subsection 5204(a) of
3 this title before attaining ~~18~~ 19 years of age shall originate in the Family
4 Division of the Superior Court, provided that jurisdiction may be transferred in
5 accordance with this chapter.

6 ~~(e) Any proceeding concerning a child who is alleged to have committed a~~
7 ~~felony offense other than those specified in subsection 5204(a) of this title~~
8 ~~before attaining 18 years of age shall originate in the Family Division of the~~
9 ~~Superior Court provided that jurisdiction may be transferred in accordance~~
10 ~~with this chapter. [Repealed.]~~

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

14 (g) A petition may be withdrawn by the State's Attorney at any time prior
15 to the hearing thereon, in which event the child shall be returned to the
16 custodial parent, guardian, or custodian, the proceedings under this chapter
17 terminated, and all files and documents relating thereto sealed under section
18 5119 of this title.

1 Sec. 10. 33 V.S.A. § 5202 is amended as follows:

2 § 5202. ORDER OF ADJUDICATION; NONCRIMINAL

3 (a)(1) An order of the Family Division of the Superior Court in proceedings
4 under this chapter shall not:

5 (A) be deemed a conviction of crime;

6 (B) impose any civil disabilities sanctions ordinarily resulting from a
7 conviction; or

8 (C) operate to disqualify the child in any civil service application or
9 appointment.

10 (2) Notwithstanding subdivision (1) of this subsection, an order of
11 delinquency in proceedings ~~transferred under subsection 5203(b) of this title,~~
12 ~~where the offense charged in the initial criminal proceedings was concerning a~~
13 child who is alleged to have committed a violation of those sections of ~~Title 23~~
14 specified in ~~subdivision~~ 23V.S.A. § 801(a)(1); shall be an event in addition to
15 those specified therein, enabling the Commissioner of Motor Vehicles to
16 require proof of financial responsibility under 23 V.S.A. chapter 11.

17 (b) The disposition of a child and evidence given in a hearing in a juvenile
18 proceeding shall not be admissible as evidence against the child in any case or
19 proceeding in any other court except after a subsequent conviction of a felony
20 in proceedings to determine the sentence.

1 Sec. 11. 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~~ 19 years of age at the time the offense charged was
5 alleged to have been committed and the offense charged is an offense not
6 specified in subsection 5204(a) of this title, that court shall forthwith transfer
7 the proceeding to the Family Division of the Superior Court under the
8 authority of this chapter, and the minor shall then be considered to be subject
9 to this chapter as a child charged with a delinquent act.

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

17 (c) If it appears to the State's Attorney that the defendant was under ~~18~~ 19
18 years of age at the time the felony offense charged was alleged to have been
19 committed and the felony charged is not an offense specified in subsection
20 5204(a) of this title, the State's Attorney shall file charges in the Family
21 Division of the Superior Court, pursuant to section 5201 of this title. The

1 Family Division may transfer the proceeding to the Criminal Division pursuant
2 to section 5204 of this title.

3 (d) A transfer under this section shall include a transfer and delivery of a
4 copy of the accusatory pleading and other papers, documents, and transcripts
5 of testimony relating to the case. Upon any such transfer, that court shall order
6 that the defendant be taken forthwith to a place of detention designated by the
7 Family Division of the Superior Court or to that court itself, or shall release the
8 child to the custody of his or her parent or guardian or other person legally
9 responsible for the child, to be brought before the Family Division of the
10 Superior Court at a time designated by that court. The Family Division of the
11 Superior Court shall then proceed as provided in this chapter as if a petition
12 alleging delinquency had been filed with the court under section 5223 of this
13 title on the effective date of such transfer.

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

16 Sec. 12. 33 V.S.A. § 5204 is amended as follows:

17 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
18 COURT

19 (a) After a petition has been filed alleging delinquency, upon motion of the
20 State's Attorney and after hearing, the Family Division of the Superior Court
21 may transfer jurisdiction of the proceeding to the Criminal Division of the

1 Superior Court, if the child had attained 16 years of age but not ~~18~~ 19 years of
2 age at the time the act was alleged to have occurred and the delinquent act set
3 forth in the petition is a felony not specified in subdivisions (1)-(12) of this
4 subsection or if the child had attained 12 years of age but not 14 years of age at
5 the time the act was alleged to have occurred, and if the delinquent act set forth
6 in the petition was any of the following:

7 (1) arson causing death as defined in 13 V.S.A. § 501;

8 (2) assault and robbery with a dangerous weapon as defined in
9 13 V.S.A. § 608(b);

10 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
11 § 608(c);

12 (4) aggravated assault as defined in 13 V.S.A. § 1024;

13 (5) murder as defined in 13 V.S.A. § 2301;

14 (6) manslaughter as defined in 13 V.S.A. § 2304;

15 (7) kidnapping as defined in 13 V.S.A. § 2405;

16 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

17 (9) maiming as defined in 13 V.S.A. § 2701;

18 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

19 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

20 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
21 § 1201(c).

1 (b) The State’s Attorney of the county where the juvenile petition is
2 pending may move in the Family Division of the Superior Court for an order
3 transferring jurisdiction under subsection (a) of this section at any time prior to
4 adjudication on the merits. The filing of the motion to transfer jurisdiction
5 shall automatically stay the time for the hearing provided for in section 5225 of
6 this title, which stay shall remain in effect until such time as the Family
7 Division of the Superior Court may deny the motion to transfer jurisdiction.

8 * * *

9 * * * Effective July 1, 2022 * * *

10 Sec. 13. 33 V.S.A. § 5201 is amended as follows:

11 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

13 (1) transfer to the court of a proceeding from another court as provided
14 in subsection (c) of this section; or

15 (2) the filing of a delinquency petition by a State’s Attorney.

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

20 (c) Any proceeding concerning a child who is alleged to have committed an
21 act specified in subsection 5204(a) of this title after attaining 14 years of age,

1 but not 18 years of age, shall originate in the Criminal Division of the Superior
2 Court, provided that jurisdiction may be transferred in accordance with this
3 chapter.

4 (d) Any proceeding concerning a child who is alleged to have committed
5 any offense other than those specified in subsection 5204(a) of this title before
6 attaining ~~19~~ 20 years of age shall originate in the Family Division of the
7 Superior Court, provided that jurisdiction may be transferred in accordance
8 with this chapter.

9 * * *

10 Sec. 14. 33 V.S.A. § 5203 is amended to read:

11 § 5203. TRANSFER FROM OTHER COURTS

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

19 (b) If it appears to a Criminal Division of the Superior Court that the
20 defendant had attained 14 years of age but not 18 years of age at the time an
21 offense specified in subsection 5204(a) of this title was alleged to have been

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

5 (c) If it appears to the State's Attorney that the defendant was under ~~19~~ 20
6 years of age at the time the felony offense charged was alleged to have been
7 committed and the felony charged is not an offense specified in subsection
8 5204(a) of this title, the State's Attorney shall file charges in the Family
9 Division of the Superior Court, pursuant to section 5201 of this title. The
10 Family Division may transfer the proceeding to the Criminal Division pursuant
11 to section 5204 of this title.

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

1 alleging delinquency had been filed with the court under section 5223 of this
2 title on the effective date of such transfer.

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

5 Sec. 15. 33 V.S.A. § 5204 is amended as follows:

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

8 (a) After a petition has been filed alleging delinquency, upon motion of the
9 State's Attorney and after hearing, the Family Division of the Superior Court
10 may transfer jurisdiction of the proceeding to the Criminal Division of the
11 Superior Court, if the child had attained 16 years of age but not ~~19~~ 20 years of
12 age at the time the act was alleged to have occurred and the delinquent act set
13 forth in the petition is a felony not specified in subdivisions (1)-(12) of this
14 subsection or if the child had attained 12 years of age but not 14 years of age at
15 the time the act was alleged to have occurred, and if the delinquent act set forth
16 in the 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
19 13 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 (b) The State’s Attorney of the county where the juvenile petition is
12 pending may move in the Family Division of the Superior Court for an order
13 transferring jurisdiction under subsection (a) of this section at any time prior to
14 adjudication on the merits. The filing of the motion to transfer jurisdiction
15 shall automatically stay the time for the hearing provided for in section 5225 of
16 this title, which stay shall remain in effect until such time as the Family
17 Division of the Superior Court may deny the motion to transfer jurisdiction.

18 * * *

19 Sec. 16. APPROPRIATION

20 In fiscal year 2019 there is appropriated the sum of \$200,000.00 to the
21 Department for Children and Families from the General Fund to prepare for

1 the expansion of services to 18 and 19 year old juvenile offenders pursuant to
2 33 V.S.A. chapters 52 and 52A beginning in fiscal year 2021, with any
3 unexpended funds to carry forward.

4 * * * Effective Dates * * *

5 Sec. 17. EFFECTIVE DATES

6 (a) This section, Sec. 4, and Sec. 16 shall take effect on passage.

7 (b) Secs. 1-3 and 5-8 shall take effect on July 1, 2018.

8 (c) Secs. 9-12 shall take effect on July 1, 2020.

9 (d) Secs. 13-15 shall take effect on July 1, 2022.

10 and that after passage the title of the bill be amended to read: “An act relating
11 to adjudicating all teenagers in the Family Division, except those charged with
12 a serious violent felony”

13
14 (Committee vote: _____)

15 _____

16 Senator _____

17 FOR THE COMMITTEE