

**No. 124. An act relating to implementing the expansion of juvenile jurisdiction.**

(S.232)

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

Sec. 1. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROJECT

(a) The Attorney General shall develop and administer an adult court diversion program in all counties. In consultation with diversion programs, the Attorney General shall adopt a policies and procedures manual in compliance with this section.

(b) The program shall be designed for two purposes:

(1) To assist adults who have been charged with a first or a second misdemeanor or a first nonviolent felony.

(2) To assist ~~adults with~~ persons who have been charged with an offense and who have substance abuse or mental health treatment needs regardless of the person's prior criminal history record, except a person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this section. Persons who have attained 18 years of age who are subject to a petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall also be eligible under this section. Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person's health and reducing future adverse involvement

in the justice system. ~~A person charged with a felony offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible under this section.~~

\* \* \*

Sec. 2. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child with a pending delinquency may be extended until six months beyond the child's:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; or

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense.

(B) ~~In no case shall~~ Except for custody of individuals 18 years of age or older that may be ordered by the court under the authority of chapter 52 of this title, custody of a child or youth 18 years of age or older shall not be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) Jurisdiction over a youthful offender shall not extend beyond the youth's 22nd birthday.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile or youthful offender probation, ~~providing~~ provided the child is not in the legal custody of the Commissioner;

(2) upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding.

Sec. 3. 33 V.S.A. § 5103(c) is amended to read:

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child with a pending delinquency may be extended until six months beyond the child's:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; ~~or~~

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense; or

(iii) 21st birthday if the child was 19 years of age when he or she committed the offense.

\* \* \*

Sec. 4. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters:

\* \* \*

(2) "Child" means any of the following:

(A) an individual who is under 18 years of age and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant);

(B)(i) an individual who is under 18 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under 16 years of age at the time the petition was filed; or

(ii) an individual who is between 16 and 17.5 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of this title; provided, however:

(i) that an individual who is alleged to have committed an act before attaining 10 years of age which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(ii) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

\* \* \*

(16)(A) “~~Legal custody~~ Custody” means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters ~~which~~ for children under 18 years of age that invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(i) the right to routine daily care and control of the child and to determine where and with whom the child shall live;

(ii) the authority to consent to major medical, psychiatric, and surgical treatment for a child;

(iii) the responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care; and

(iv) the authority to make decisions ~~which~~ that concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the U.S. Armed Forces, and the authority to represent the child in legal actions.

(B) If ~~legal~~ custody of a child under 18 years of age is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(C) Custody for individuals who are 18 years of age or older means the status created by order of the court under the authority of chapter 52 of this title that invests in the Commissioner the authority to make decisions regarding placements.

\* \* \*

Sec. 5. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME  
COMMITTED WHEN DEFENDANT WAS UNDER ~~AGE~~ 18  
YEARS OF AGE

(a) A proceeding may be commenced in the Family Division against a defendant who has attained 18 years of age if:

(1) the petition alleges that the defendant:

(A) before attaining 18 years of age, violated a crime listed in subsection 5204(a) of this title; ~~or~~

(B) after attaining 14 years of age but before attaining 18 years of age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; or

(C) after attaining 17 years of age but before attaining 18 years of age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title, as long as the petition is filed prior to the defendant's 19th birthday;

(2) a juvenile petition was never filed based upon the alleged conduct;  
and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition;  
and

(D) transfer would be in the interest of justice and public safety.

(2)(A) If a petition has been filed pursuant to subdivision (a)(1)(A) of this section, the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of chapter 52A of this title if the defendant is under 23 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.



(B) If the Family Division orders that the defendant be treated as a youthful offender, the court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(B) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 22nd birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 14 years of age but before attaining 18 years of age, the defendant committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(4) In making the determination required by subdivision (1)(D) of this subsection, the court may consider, among other matters:

(A) the maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(B) the extent and nature of the defendant's prior criminal record and record of delinquency;

(C) the nature of past treatment efforts and the nature of the defendant's response to them;

(D) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(E) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(F) whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) If the Family Division does not transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

(d)(1) The Family Division shall treat a petition filed pursuant to subdivision (a)(1)(C) of this section in all respects in the same manner as a petition filed pursuant to section 5201 of this title if the court:

(A) finds that there is probable cause to believe that, after attaining 17 years of age but before attaining 18 years of age, the defendant committed an offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(2) The Family Division's jurisdiction over cases filed pursuant to subdivision (a)(1)(C) of this section shall end on or before the defendant's 20th birthday.

Sec. 6. 33 V.S.A. § 5206 is amended to read:

§ 5206. CITATION OF 16- ~~AND 17~~ YEAR OLDS TO 18-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under ~~18~~ 19 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State's Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State's Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents-duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) ~~A listed crime as defined in 13 V.S.A. § 5301.~~

(4) An offense listed in subsection 5204(a) of this title.

Sec. 7. 33 V.S.A. § 5206 is amended to read:

§ 5206. CITATION OF 16- TO ~~18-YEAR-OLDS~~ 19-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under ~~19~~ 20 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

\* \* \*

Sec. 8. 33 V.S.A. § 5280 is amended to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

PROCEEDINGS IN THE FAMILY DIVISION

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

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

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

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

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

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

(d) Within 15 days after the commencement of a youthful offender proceeding pursuant to subsection (a) of this section, the youth shall be offered a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and needs screenings. The risk and needs screening shall be completed prior to the youthful offender status hearing held pursuant to section 5283 of this title. Unless the court extends the period for the risk and needs screening for good cause shown, the Family Division shall reject the case for youthful offender treatment if the youth does not complete the risk and needs screening within 15 days of the offer for the risk and needs screening.

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

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

(e) ~~If The State's Attorney shall refer directly to court diversion a youth alleged to have committed any offense other than those specified in subsection 5204(a) of this title who presents a low to moderate risk to reoffend based on the results of the risk and needs screening, ~~the State's Attorney shall refer a youth directly to court diversion~~ unless the State's Attorney states on the record at the hearing held pursuant to section 5283 of this title why a referral would not serve the ends of justice. If the court diversion program does not accept the case or if the youth fails to complete the program in a manner deemed satisfactory and timely by the provider, the youth's case shall return to the State's Attorney for charging consideration.~~

Sec. 9. 33 V.S.A. § 5287 is amended to read:

§ 5287. TERMINATION OR CONTINUANCE OF PROBATION

(a) A motion or stipulation may be filed at any time in the Family Division requesting that the court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the State's Attorney, the youth, the Department, or the court on its own motion. ~~The court~~

~~shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the State's Attorney, the youth, the Department for Children and Families and the Department of Corrections.~~

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

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

(2) the youth's performance during treatment;

(3) reports of treatment personnel; and

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

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

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

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

(f) Upon the termination of the period of probation, the youth shall be discharged from probation.

Sec. 10. 33 V.S.A. subchapter 6 is amended to read:

Subchapter 6. Placement of ~~Minors~~ in Secure Facilities

§ 5291. DETENTION OR TREATMENT OF ~~MINORS~~ INDIVIDUALS  
CHARGED AS DELINQUENTS IN SECURE FACILITIES FOR  
THE DETENTION OR TREATMENT OF DELINQUENT  
CHILDREN

(a) Prior to disposition, the court shall have the sole authority to place a child who is in the custody of the Department in a secure facility used for the detention or treatment of delinquent children until the Commissioner determines that a suitable placement is available for the child. The court shall not order placement in a secure facility without a recommendation from the Department that placement in a secure facility is necessary. The court order shall include a finding that no other suitable placement is available and the child presents a risk of injury to himself or herself, to others, or to property.

\* \* \*

Sec. 11. 28 V.S.A. § 1101 is amended to read:

§ 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER  
REGARDING JUVENILE SERVICES

The Commissioner is charged with the following powers and responsibilities regarding the administration of juvenile services:



(1) to provide appropriate, ~~separate~~ facilities for the custody and treatment of offenders under 25 years of age committed to his or her custody in accordance with the laws of the State;

\* \* \*

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 510(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, 2022.

(b) The rest of this act shall take effect on July 1, 2020.

Date Governor signed bill: July 1, 2020