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H.222

Introduced by Representatives Anthony of Barre City, Walz of Barre City,  
LaClair of Barre Town, and McFaun of Barre Town

Referred to Committee on

Date:

Subject: Court procedure; youthful offender; juvenile delinquency

Statement of purpose of bill as introduced: This bill proposes to require youths  
18 years of age or older who are charged with serious violent felonies be  
adjudicated in the Criminal Division.

An act relating to excluding serious violent felonies from youthful offender  
status for individuals 18 years of age or older

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

Sec. 1. 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.

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, except that a child who is alleged  
5 to have committed an offense specified in section 5204(a)(1)–(13) of this title  
6 after attaining 18 years of age but not 22 years of age must be adjudicated in  
7 the Criminal Division.

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

11 (d) Within 15 days after the commencement of a youthful offender  
12 proceeding pursuant to subsection (a) of this section, the youth shall be offered  
13 a risk and needs screening, which shall be conducted by the Department or by  
14 a community provider that has contracted with the Department to provide risk  
15 and needs screenings. The risk and needs screening shall be completed prior to  
16 the youthful offender status hearing held pursuant to section 5283 of this title.  
17 Unless the court extends the period for the risk and needs screening for good  
18 cause shown, the Family Division shall reject the case for youthful offender  
19 treatment if the youth does not complete the risk and needs screening within  
20 15 days.

1           (1) The Department or the community provider shall report the risk level  
2 result of the screening, the number and source of the collateral contacts made,  
3 and the recommendation for charging or other alternatives to the State's  
4 Attorney. Diversion shall not be recommended for an offense specified in  
5 section 5204(a)(1)–(13) of this title.

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

12           (e) If a youth presents a low to moderate risk to reoffend based on the  
13 results of the risk and needs screening, the State's Attorney shall refer a youth  
14 directly to court diversion unless the State's Attorney states on the record at the  
15 hearing held pursuant to section 5283 of this title why a referral would not  
16 serve the ends of justice or if the offense is one specified in section  
17 5204(a)(1)–(13) of this title. If the court diversion program does not accept the  
18 case or if the youth fails to complete the program in a manner deemed  
19 satisfactory and timely by the provider, the youth's case shall return to the  
20 State's Attorney for charging consideration.

1 Sec. 2. 33 V.S.A. § 5281 is amended to read:

2 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

3 (a) A motion may be filed in the Criminal Division of the Superior Court  
4 requesting that a defendant under 22 years of age in a criminal proceeding who  
5 had attained 12 years of age but not 22 years of age at the time the offense is  
6 alleged to have been committed be treated as a youthful offender, except that a  
7 child who is alleged to have committed an offense specified in section  
8 5204(a)(1)–(13) of this title after attaining 18 years of age but not 22 years of  
9 age must be adjudicated in the Criminal Division. The motion may be filed by  
10 the State’s Attorney, the defendant, or the court on its own motion.

11 \* \* \*

12 Sec. 3. 33 V.S.A. § 5204(a) is amended to read:

13 (a) After a petition has been filed alleging delinquency, upon motion of the  
14 State’s Attorney and after hearing, the Family Division of the Superior Court  
15 may transfer jurisdiction of the proceeding to the Criminal Division of the  
16 Superior Court, if the child had attained 16 years of age but not 18 years of age  
17 at the time the act was alleged to have occurred and the delinquent act set forth  
18 in the petition is a felony not specified in subdivisions (1)–~~(12)~~(13) of this  
19 subsection or if the child had attained 12 years of age but not 14 years of age at  
20 the time the act was alleged to have occurred, and if the delinquent act set forth  
21 in the petition was any of the following:

- 1 (1) arson causing death as defined in 13 V.S.A. § 501;
- 2 (2) assault and robbery with a dangerous weapon as defined in
- 3 13 V.S.A. § 608(b);
- 4 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
- 5 § 608(c);
- 6 (4) aggravated assault as defined in 13 V.S.A. § 1024;
- 7 (5) murder as defined in 13 V.S.A. § 2301;
- 8 (6) manslaughter as defined in 13 V.S.A. § 2304;
- 9 (7) kidnapping as defined in 13 V.S.A. § 2405;
- 10 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 11 (9) maiming as defined in 13 V.S.A. § 2701;
- 12 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 13 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; ~~or~~
- 14 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
- 15 § 1201(c); or
- 16 (13) domestic terrorism as defined in 13 V.S.A. § 1703.

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on passage.