

H.342

An act relating to qualification for a public defender

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

Sec. 1. 13 V.S.A. § 5201 is amended to read:

§ 5201. DEFINITIONS

~~In~~ As used in this chapter, the term:

(1) “Detain” means to have in custody or otherwise deprive of freedom of action.

(2) “Expenses,” when used with reference to representation under this chapter, includes the expenses of investigation, other preparation, and trial.

(3) “Needy person” means a person who at the time his or her need is determined is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of representation or who is otherwise unable to employ an attorney.

(4) ~~“Serious crime” includes:~~

~~(A) a felony;~~

~~(B) a misdemeanor the maximum penalty for which is a fine of more than \$1,000.00 or any period of imprisonment unless the judge, at the arraignment but before the entry of a plea, determines and states on the record that he or she will not sentence the defendant to a fine of more than \$1,000.00 or a period of imprisonment if the defendant is convicted of the misdemeanor;~~
and

~~(C) an act that, but for the age of the person involved, would be a serious crime.~~

~~(5) "Serious crime" does not include the following misdemeanor offenses unless the judge at arraignment but before the entry of a plea determines and states on the record that a sentence of imprisonment or a fine over \$1,000.00 may be imposed on conviction:~~

~~(A) [Repealed.]~~

~~(B) Big game violations (10 V.S.A. § 4518)~~

~~(C) Simple assault by mutual consent (13 V.S.A. § 1023(b))~~

~~(D) Bad checks (13 V.S.A. § 2022)~~

~~(E) Petit larceny (13 V.S.A. § 2502)~~

~~(F) Theft of services under \$500.00 (13 V.S.A. § 2582)~~

~~(G) Retail theft under \$900.00 (13 V.S.A. § 2577)~~

~~(H) Unlawful mischief (13 V.S.A. § 3701(e))~~

~~(I) Unlawful trespass (13 V.S.A. § 3705(a))~~

~~(J) Disorderly conduct (13 V.S.A. § 1026)~~

~~(K) Possession of marijuana first offense (18 V.S.A. § 4230(a)(1))~~

~~(L) Violation of municipal ordinances. [Repealed]~~

Sec. 2. 13 V.S.A. § 5206 is amended to read:

~~§ 5206. APPOINTMENT OF COUNSEL BY COURT; USE OF
UNCOUNSELED CONVICTIONS~~

~~(a) Prior to any decision regarding the appointment of counsel under the provisions of subdivisions 5201(4)(B) and (5) of this title, the judge shall inquire of the prosecutor whether a term of imprisonment or a fine over \$1,000.00 will be sought.~~

~~(b) At the request of the prosecutor or on the judge's own motion, at any time prior to the commencement of trial and if there is a change of circumstances or new information, the judge may vacate the commitment to not sentence the defendant to a fine of not more than \$1,000.00 or to a period of incarceration upon conviction. If the judge vacates the commitment, the judge shall inform the defendant of the right to apply for the appointment of counsel at State expense.~~

~~(c) A prior uncounseled criminal conviction of a crime listed in subdivisions (A) through (L) of subdivision (5) of section 5201 of this title in which counsel was denied and the defendant was otherwise entitled to appointed counsel under this subchapter, shall not be used to subject that defendant to the enhanced statutory penalty for a subsequent conviction for the same offense.~~

~~(d) Notwithstanding subdivision 5201(4)(B) of this title, a needy person who is charged with an offense which provides for a felony penalty for the next subsequent conviction for the same offense shall be entitled to counsel under this chapter. [Repealed.]~~

Sec. 3. 13 V.S.A. § 5231 is amended to read:

§ 5231. RIGHT TO REPRESENTATION, SERVICES, AND FACILITIES

(a) A needy person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a ~~serious~~ crime, is entitled:

(1) To be represented by an attorney to the same extent as a person having his or her own counsel;~~and~~

(2) To be provided with the necessary services and facilities of representation. Any such necessary services and facilities of representation that exceed \$1,500.00 per item must receive prior approval from the court after a hearing involving the parties. The court may conduct the hearing outside the presence of the State, but only to the extent necessary to preserve privileged or confidential information. This obligation and requirement to obtain prior court approval shall also be imposed in like manner upon the Attorney General or a State's Attorney prosecuting a violation of the law.

(b) The attorney, services and facilities, and court costs shall be provided at public expense to the extent that the person, at the time the court determines need, is unable to provide for the person's payment without undue hardship.

Sec. 4. 13 V.S.A. § 5232 is amended to read:

§ 5232. PARTICULAR PROCEEDINGS

Counsel shall be assigned under section 5231 of this title to represent needy persons in any of the following:

(1) extradition proceedings;

(2) habeas corpus and other proceedings ~~wherein~~ in which the person is confined in a ~~penal correctional facility or mental institution~~ the person is under an order of hospitalization pursuant to 18 V.S.A. § 7619 in this state State and seeks release therefrom; or

(3) proceedings arising out of a petition brought in a juvenile court when the court deems the interests of justice require representation of either the child or ~~his or her~~ the child's parents or guardian or both, including any subsequent proceedings arising from an order in the proceedings ~~therein~~.

Sec. 5. 13 V.S.A. § 5234 is amended to read:

§ 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

(a) If a person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a ~~serious~~ crime, is not represented by an attorney under conditions in which a person having his or her own counsel would be entitled to be so represented, the law enforcement officer, magistrate, or court concerned shall:

(1) Clearly inform ~~him or her of the right of a~~ the person of the right to be represented by an attorney and the right of a needy person to be represented at public expense; ~~and.~~

(2) If the person detained or charged does not have an attorney and does not knowingly, voluntarily, and intelligently waive his or her right to have an attorney when detained or charged, notify the appropriate public defender that he or she is not so represented. This shall be done upon commencement of detention, formal charge, or post-conviction proceeding, ~~as the case may be.~~ As used in this subsection, the term “commencement of detention” includes the taking into custody of a probationer or parolee.

(b) Upon commencement of any later judicial proceeding relating to the same matter, the presiding officer shall clearly inform the person ~~so~~ detained or charged of the right of a needy person to be represented by an attorney at public expense.

(c) Information given to a person by a law enforcement officer under this section is effective only if it is communicated to a person in a manner meeting standards under the ~~constitution of the United States~~ U.S. Constitution relating to admissibility in evidence against him or her of statements of a detained person.

(d) Information meeting the standards of subsection (c) of this section and given to a person by a law enforcement officer under this section gives rise to a rebuttable presumption that the information was effectively communicated if:

(1) ~~It~~ it is in writing or otherwise recorded;

(2) ~~The~~ the recipient records his or her acknowledgment of receipt and time of receipt of the information; and

(3) ~~The~~ the material so recorded under subdivisions (1) and (2) of this subsection is filed with the court next concerned.

Sec. 6. 13 V.S.A. § 5201 is amended to read:

§ 5201. DEFINITIONS

As used in this chapter:

(1) “Detain” means to have in custody or otherwise deprive of freedom of action.

(2) “Expenses,” when used with reference to representation under this chapter, includes the expenses of investigation, other preparation, and trial.

(3) “Needy person” means a person who at the time his or her need is determined is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of representation or who is otherwise unable to employ an attorney.

(4) ~~[Repealed]~~ “Serious crime” includes:

(A) a felony;

(B) a misdemeanor the maximum penalty for which is a fine of more than \$1,000.00 or any period of imprisonment unless the judge, at the arraignment but before the entry of a plea, determines and states on the record that he or she will not sentence the defendant to a fine of more than \$1,000.00 or a period of imprisonment if the defendant is convicted of the misdemeanor;
and

(C) an act that, but for the age of the person involved, would be a serious crime.

(5) "Serious crime" does not include the following misdemeanor offenses unless the judge at arraignment but before the entry of a plea determines and states on the record that a sentence of imprisonment or a fine over \$1,000.00 may be imposed on conviction:

(A) Big game violations (10 V.S.A. § 4518)

(B) Simple assault by mutual consent (13 V.S.A. § 1023(b))

(C) Bad checks (13 V.S.A. § 2022)

(D) Petit larceny (13 V.S.A. § 2502)

(E) Theft of services under \$500.00 (13 V.S.A. § 2582)

(F) Retail theft under \$900.00 (13 V.S.A. § 2577)

(G) Unlawful mischief (13 V.S.A. § 3701(c))

(H) Unlawful trespass (13 V.S.A. § 3705(a))

(I) Disorderly conduct (13 V.S.A. § 1026)

(J) Possession of marijuana (18 V.S.A. § 4230(a)(1)(A))

(K) Violation of municipal ordinances.

Sec. 7. 13 V.S.A. § 5206 is amended to read:

§ 5206. ~~[Repealed.]~~ APPOINTMENT OF COUNSEL BY COURT; USE OF
UNCOUNSELED CONVICTIONS

(a) Prior to any decision regarding the appointment of counsel under the provisions of subdivisions 5201(4)(B) and (5) of this title, the judge shall inquire of the prosecutor whether a term of imprisonment or a fine over \$1,000.00 will be sought.

(b) At the request of the prosecutor or on the judge's own motion, at any time prior to the commencement of trial and if there is a change of circumstances or new information, the judge may vacate the commitment to not sentence the defendant to a fine of not more than \$1,000.00 or to a period of incarceration upon conviction. If the judge vacates the commitment, the judge shall inform the defendant of the right to apply for the appointment of counsel at State expense.

(c) A prior uncounseled criminal conviction of a crime listed in subdivisions (A) through (K) of subdivision (5) of section 5201 of this title in which counsel was denied and the defendant was otherwise entitled to appointed counsel under this subchapter, shall not be used to subject that

defendant to the enhanced statutory penalty for a subsequent conviction for the same offense.

(d) Notwithstanding subdivision 5201(4)(B) of this title, a needy person who is charged with an offense that provides for a felony penalty for the next subsequent conviction for the same offense shall be entitled to counsel under this chapter.

Sec. 8. 13 V.S.A. § 5231 is amended to read:

§ 5231. RIGHT TO REPRESENTATION, SERVICES, AND FACILITIES

(a) A needy person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is entitled:

(1) To be represented by an attorney to the same extent as a person having his or her own counsel.

(2) To be provided with the necessary services and facilities of representation. Any such necessary services and facilities of representation that exceed \$1,500.00 per item must receive prior approval from the court after a hearing involving the parties. The court may conduct the hearing outside the presence of the State, but only to the extent necessary to preserve privileged or confidential information. This obligation and requirement to obtain prior court approval shall also be imposed in like manner upon the Attorney General or a State's Attorney prosecuting a violation of the law.

(b) The attorney, services and facilities, and court costs shall be provided at public expense to the extent that the person, at the time the court determines need, is unable to provide for the person's payment without undue hardship.

Sec. 9. 13 V.S.A. § 5234 is amended to read:

§ 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

(a) If a person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is not represented by an attorney under conditions in which a person having his or her own counsel would be entitled to be so represented, the law enforcement officer, magistrate, or court concerned shall:

(1) Clearly inform the person of the right to be represented by an attorney and the right of a needy person to be represented at public expense.

(2) If the person detained or charged does not have an attorney and does not knowingly, voluntarily, and intelligently waive his or her right to have an attorney when detained or charged, notify the appropriate public defender that he or she is not so represented. This shall be done upon commencement of detention, formal charge, or post-conviction proceeding. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer or parolee.

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Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 1–5 shall take effect July 1, 2019.

(b) Secs. 6–9 shall take effect July 1, 2021.