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S.133

Introduced by Senator Sears

Referred to Committee on Judiciary

Date: February 27, 2019

Subject: Family Division; youthful offender; juvenile delinquency

Statement of purpose of bill as introduced: This bill proposes to amend generally the statutes related to adjudicating juvenile delinquency and youthful offender cases.

An act relating to juvenile jurisdiction

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

Sec. 1. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters:

(1) “Care provider” means a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.

(2) “Child” means any of the following:

(A) an individual who is under ~~the age of 18~~ years of age and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or

1 (D) of this section (abandoned, abused, without proper parental care, or  
2 truant);

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

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

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

16 (i) ~~that an individual who is alleged to have committed an act~~  
17 ~~specified in subsection 5204(a) of this title after attaining 12 years of age but~~  
18 ~~not 14 years of age may be treated as an adult as provided therein;~~

19 (ii) ~~that an individual who is alleged to have committed an act~~  
20 ~~specified in subsection 5204(a) of this title after attaining the age of 14 but not~~  
21 ~~the age of 16 shall be subject to criminal proceedings as in cases commenced~~

1 against adults, unless transferred to the court in accordance with the juvenile  
2 judicial proceedings chapters;

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

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

9 \* \* \*

10 (9) “Delinquent act” means an act designated a crime under the laws of  
11 this State, or of another state if the act occurred in another state, or under  
12 federal law. A delinquent act shall include a violation of 7 V.S.A. § 656;  
13 however, it shall not include:

14 (A) snowmobile offenses in 23 V.S.A. chapter 29, subchapter 1 and  
15 motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations  
16 of sections 3207a, 3207b, 3207c, 3207d, and 3323;

17 (B) pursuant to 4 V.S.A. § 33(b), felony motor vehicle offenses  
18 committed by an individual who is 16 years of age or older, except for  
19 violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091.

20 (10) “Delinquent child” means a child who has been adjudicated to have  
21 committed a delinquent act.

1 (11) “Department” means the Department for Children and Families.

2 (12) “Guardian” means a person who, at the time of the commencement  
3 of the juvenile judicial proceeding, has legally established rights to a child  
4 pursuant to an order of a Vermont court or a court in another jurisdiction.

5 (13) “Judge” means a judge of the Family Division of the Superior  
6 Court.

7 (14) “Juvenile judicial proceedings chapters” means this chapter and  
8 chapters 52, 52A, and 53 of this title.

9 \* \* \*

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

11 § 5103. JURISDICTION

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

17 (b) Orders issued under the authority of the juvenile judicial proceedings  
18 chapters shall take precedence over orders in other Family Division  
19 proceedings and any order of another court of this State, to the extent they are  
20 inconsistent. This section shall not apply to child support orders in a divorce,

1 parentage, or relief from abuse proceedings until a child support order has  
2 been issued in the juvenile proceeding.

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

6 (2)(A) Jurisdiction over a child with a pending delinquency may be  
7 extended until six months beyond the child's 19th birthday if the child was  
8 16 or 17 years of age when he or she committed the offense.

9 (B) In no case shall custody of a child or youth 18 years of age or  
10 older be retained by or transferred to the Commissioner for Children and  
11 Families.

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

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

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

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

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

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

5 Sec. 3. 33 V.S.A. § 5201 is amended to read:

6 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

8                 (1) transfer to the court of a proceeding from another court as provided  
9 in section 5203 of this title; or

10                (2) the filing of a delinquency petition by a State's Attorney.

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

          (c) Any proceeding concerning a child who is alleged to have committed  
an act specified in subsection 5204(a) of this title after attaining 14 years of  
age, but not ~~18~~ 22 years of age, shall originate in the Criminal Division of the  
Superior Court, provided that jurisdiction may be transferred in accordance  
with this chapter and chapter 52A of this title, unless the State's Attorney files  
the charge directly as a ~~delinquency~~ *youthful offender* petition in the Family  
Division.

1 \* \* \*

2 Sec. 4. 33 V.S.A. § 5280 is amended to read:

3 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

4 PROCEEDINGS IN THE FAMILY DIVISION

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

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

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

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

9 (b) A State's Attorney may commence a proceeding in the Family Division  
10 of the Superior Court concerning a child who is alleged to have committed an  
11 offense after attaining ~~16~~ 14 years of age but not 22 years of age that could  
12 otherwise be filed in the Criminal Division, except that proceedings  
13 concerning individuals charged with committing an act specified in subsection  
14 5204(a) of this title after attaining 18 years of age but not 22 years of age must  
15 commence 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 this  
18 title.

19 (d) Within 15 days after the commencement of a youthful offender  
20 proceeding pursuant to subsection (a) of this section, the youth shall be offered  
21 a risk and needs screening, which shall be conducted by the Department or by

1 a community provider that has contracted with the Department to provide risk  
2 and needs screenings. The risk and needs screening shall be completed prior  
3 to the youthful offender status hearing held pursuant to section 5283 of this  
4 title. Unless the court extends the period for the risk and needs screening for  
5 good cause shown, the Family Division shall reject the case for youthful  
6 offender treatment if the youth does not complete the risk and needs screening  
7 within 15 days of the offer for the risk and needs screening.

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

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

18 (e) If a youth presents a low to moderate risk to reoffend based on the  
19 results of the risk and needs screening, the State's Attorney shall refer a youth  
20 directly to court diversion unless the State's Attorney states on the record at  
21 the hearing held pursuant to section 5283 of this title why a referral would not



1 serve the ends of justice. If the court diversion program does not accept the  
2 case or if the youth fails to complete the program in a manner deemed  
3 satisfactory and timely by the provider, the youth's case shall return to the  
4 State's Attorney for charging consideration.

5 Sec. 5. 33 V.S.A. § 5281 is amended to read:

6 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

7 (a) A motion may be filed in the Criminal Division of the Superior Court  
8 requesting that a defendant under 22 years of age in a criminal proceeding who  
9 had attained 12 years of age but not 22 years of age at the time the offense is  
10 alleged to have been committed be treated as a youthful offender. The motion  
11 may be filed by the State's Attorney, the defendant, or the court on its own  
12 motion, unless the charged offense is an act specified in subsection 5204(a) of  
13 this title and the individual charged had attained 20 years of age but not  
14 22 years of age at the time the act is alleged to have been committed, pursuant  
15 to subsection (e) of this section.

16 (b) ~~Upon~~ Unless the State's Attorney refers the youth directly to court  
17 diversion pursuant to subsection 5280(e) of this title, upon the filing of a  
18 motion under this section or the filing of a youthful offender petition pursuant  
19 to section 5280 of this title, the Family Division shall hold a hearing pursuant  
20 to section 5283 of this title. Pursuant to section 5110 of this title, the hearing  
21 shall be confidential. Copies of all records relating to the case shall be

1 forwarded to the Family Division. Conditions of release and any Department  
2 of Corrections supervision or custody shall remain in effect until:

3 (1) the Family Division accepts the case for treatment as a youthful  
4 offender and orders conditions of juvenile probation pursuant to section 5284  
5 of this title;

6 (2) any conditions of release or bail are modified, amended, or vacated  
7 pursuant to 13 V.S.A. chapter 229; or

8 (3) the case is otherwise concluded.

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

15 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and  
16 Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of  
17 the motion for youthful offender treatment and any information related to the  
18 youthful offender proceeding shall be inadmissible against the youth for any  
19 purpose in the subsequent Criminal Division proceeding.

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

4 (e) For individuals charged with committing an act specified in subsection  
5 5204(a) who had attained 20 years of age but not 22 years of age at the time  
6 the act is alleged to have been committed, only the State’s Attorney may file a  
7 motion in the Criminal Division requesting the individual be treated as a  
8 youthful offender.

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

10 § 5282. REPORT FROM THE DEPARTMENT

11 (a) Within 30 days after the youth has completed the risk and needs  
12 screening pursuant to section 5280 of this title, unless the court extends the  
13 period for good cause shown or the State’s Attorney refers the youth directly  
14 to court diversion pursuant to subsection 5280(e) of this title, the Department  
15 for Children and Families shall file a report with the Family Division of the  
16 Superior Court.

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

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

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

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

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

6           (1) the Department;

7           (2) the court;

8           (3) the State's Attorney;

9           (4) the youth, the youth's attorney, and the youth's guardian ad litem;

10           (5) the youth's parent, guardian, or custodian if the youth is under  
11 18 years of age, unless the court finds that disclosure would be contrary to the  
12 best interest of the child;

13           (6) the Department of Corrections; or

14           (7) any other person when the court determines that the best interests of  
15 the youth would make such a disclosure desirable or helpful.

16 Sec. 7. 33 V.S.A. § 5283 is amended to read:

17 § 5283. HEARING IN FAMILY DIVISION

18           (a) Timeline. A Unless the State's Attorney refers the youth directly to  
19 court diversion pursuant to subsection 5280(e) of this title, a youthful offender  
20 status consideration hearing shall be held no later than ~~35~~ 60 days after the

1 transfer of the case from the Criminal Division or filing of a youthful offender  
2 petition in the Family Division.

3 (b) Notice. Notice of the hearing shall be provided to the State's Attorney;  
4 the youth; the youth's parent, guardian, or custodian; the Department; and the  
5 Department of Corrections.

6 (c) Hearing procedure.

7 (1) If the motion is contested, all parties shall have the right to present  
8 evidence and examine witnesses. Hearsay may be admitted and may be relied  
9 on to the extent of its probative value. If reports are admitted, the parties shall  
10 be afforded an opportunity to examine those persons making the reports, but  
11 sources of confidential information need not be disclosed.

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

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

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

1 Sec. 8. 33 V.S.A. § 5286 is amended to read:

2 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

3 (a) If a youth is adjudicated on probation as a youthful offender prior to  
4 reaching 18 years of age, the Family Division shall review the youth's case  
5 before he or she reaches 18 years of age and set a hearing to determine  
6 whether the court's jurisdiction over the youth should be continued past 18  
7 years of age. The hearing may be joined with a motion to terminate youthful  
8 offender status under section 5285 of this title. The court shall provide notice  
9 and an opportunity to be heard at the hearing to the State's Attorney, the youth,  
10 the Department for Children and Families, and the Department of Corrections.

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

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

17 (1) The Department for Children and Families and the Department of  
18 Corrections shall jointly report their recommendations, with supporting  
19 justifications, as to whether the Family Division should continue jurisdiction  
20 over the youth past 18 years of age and, if continued jurisdiction is

1 recommended, propose a case plan for the youth to ensure compliance with  
2 and completion of the juvenile disposition.

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

6 (d) If the court finds that it is in the best ~~interest~~ interests of the youth and  
7 consistent with community safety to continue the case past 18 years of age, it  
8 shall make an order continuing the court's jurisdiction up to 22 years of age.  
9 The Department for Children and Families and the Department of Corrections  
10 shall jointly develop a case plan for the youth and coordinate services and  
11 share information to ensure compliance with and completion of the juvenile  
12 disposition.

13 (e) If the court finds that it is not in the best ~~interest~~ interests of the youth  
14 to continue the case past 18 years of age, it shall terminate the disposition  
15 order, discharge the youth, and dismiss the case in accordance with  
16 subsection 5287(c) of this title.

17 Sec. 9. 3 V.S.A. § 164 is amended to read:

18 § 164. ADULT COURT DIVERSION PROGRAM

19 (a) The Attorney General shall develop and administer an adult court  
20 diversion program in all counties. In consultation with diversion programs,

1 the Attorney General shall adopt a policies and procedures manual in  
2 compliance with this section.

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

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

6 (2) To assist adults with substance abuse or mental health treatment  
7 needs regardless of the person's prior criminal history record. Programming  
8 for these persons is intended to support access to appropriate treatment or other  
9 resources with the aim of improving the person's health and reducing future  
10 adverse involvement in the justice system. A person charged with a felony  
11 offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible  
12 under this section.

13 (c) The program shall support the operation of diversion programs in local  
14 communities through grants of financial assistance to, or contracts for services  
15 with, municipalities, private groups, or other local organizations. The  
16 Attorney General may require local financial contributions as a condition of  
17 receipt of program funding.

18 (d) The Office of the Attorney General shall develop program outcomes  
19 following the designated State of Vermont performance accountability  
20 framework and, in consultation with the Department of State's Attorneys and  
21 Sheriffs, the Office of the Defender General, the Center for Crime Victim



1 Services, and the Judiciary, report annually on or before December 1 to the  
2 General Assembly on services provided and outcome indicators.

3 (e) All adult court diversion programs receiving financial assistance from  
4 the Attorney General shall adhere to the following provisions:

5 (1)(A) The diversion program shall accept only persons against whom  
6 charges have been filed and the court has found probable cause, but are not yet  
7 adjudicated. The prosecuting attorney may refer a person to diversion either  
8 before or after arraignment and shall notify in writing the diversion program  
9 and the court of his or her intention to refer the person to diversion. The  
10 matter shall become confidential when notice is provided to the court. If a  
11 person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A)  
12 and the crime is a misdemeanor, the prosecutor shall provide the person with  
13 the opportunity to participate in the court diversion program unless the  
14 prosecutor states on the record at arraignment or a subsequent hearing why a  
15 referral to the program would not serve the ends of justice. If the prosecuting  
16 attorney refers a case to diversion, the prosecuting attorney may release  
17 information to the victim upon a showing of legitimate need and subject to an  
18 appropriate protective agreement defining the purpose for which the  
19 information is being released and in all other respects maintaining the  
20 confidentiality of the information; otherwise files held by the court, the

1 prosecuting attorney, and the law enforcement agency related to the charges  
2 shall be confidential and shall remain confidential unless:

3 ~~(A)~~(i) the diversion program declines to accept the case;

4 ~~(B)~~(ii) the person declines to participate in diversion;

5 ~~(C)~~(iii) the diversion program accepts the case, but the person does  
6 not successfully complete diversion; or

7 ~~(D)~~(iv) the prosecuting attorney recalls the referral to diversion.

8 (B)(i) The prosecuting attorney shall refer to a post-plea adult drug  
9 or DUI treatment docket an offender:

(I) charged with a new criminal offense or a violation of  
conditions of a probationary sentence if the offense is ~~an outcome of substance~~  
~~dependence~~ *associated with a substance ~~abuse~~ use disorder*; and

10 (II) screened with a validated instrument by a treatment docket  
11 coordinator as having a high prognostic risk and high criminogenic needs.

12 (ii) An offender charged with a crime pursuant to subdivision  
13 (1)(B)(i) of this subsection (e) shall be presumed eligible for participation in a  
14 treatment docket unless the prosecutor, after consultation with the victim,  
15 states on the record why a referral to the program would not serve the ends of  
16 justice because:

17 (I) evidence demonstrates that the offender cannot be managed  
18 safely or effectively in a treatment docket; or

