



---

TO: Joint Legislative Justice Oversight Committee

FROM: Hon. Thomas Zonay, Chair  
Commission on Sentencing Disparities and Criminal Code Reclassification  
("Sentencing Commission")

RE: Sentencing Commission Report pursuant to Act 142 (2018), *An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification*

DATE: November 30, 2019

---

## Executive Summary

In 2018, the Vermont General Assembly passed Act No. 142 reconstituting the Vermont Sentencing Commission for the express purpose of overseeing criminal sentencing practices in the State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the General Assembly. As of the submission of this report, the Commission has met 11 times to discuss and formulate recommendations relating to the specific charges included in the enabling legislation. The Commission recommends the following:

### Recommendations Regarding Classification of Criminal Offenses

The Commission recommends enactment of legislation consistent with Act 61 Criminal Code Reclassification Final Report July 2015. See Attachment A.

The Commission recommends enactment of legislation consistent with its attached proposal on classification of sexual offenses. See Attachment B.

The Commission recommends enactment of legislation consistent with its attached proposal on classification of property crimes. See Attachment C.

### Additional Recommendations

The Commission recommends expanding and fully funding the alternative justice options already in existence, such as Diversion, Tamarack, and drug treatments courts.

The Commission recommends that the Legislature consider the merits of permitting a judge to send a case to Diversion or Tamarack in a manner consistent with constitutional separation of powers and established procedures from other jurisdictions.

The Commission recommends establishing consistent statewide criteria for drug treatment court eligibility and standard practices for referrals.

The Commission recommends that the Legislature re-examine the various possession thresholds in Title 18, Chapter 84 and consider increasing the weight and/or dosage upper limits for misdemeanor possession crimes to better reflect current personal use amounts.

The Commission recommends enactment of legislation consistent with its attached proposal on amending 33 V.S.A. § 5204a. See Attachment D.

The Commission has identified additional issues that require further consideration and analysis. The Commission intends to make recommendations in a supplemental report to the General Assembly on or before November 30, 2020 with respect to the following:

the classification of additional crimes beyond sexual and property crimes;

the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses;

the development of a classification scheme for all fines; and

the reconciliation of categories of crimes within existing Vermont statutes, to include listed crimes and designated crimes.

## Report Requirements

The Vermont General Assembly, through Act No. 142 (2018), *An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification*, reconstituted the Commission on Sentencing Disparities and Criminal Code Reclassification (“Sentencing Commission” or “Commission”). The enabling legislation directs the Sentencing Commission to develop responses to the significant impacts that increased opioid addiction have had on the

criminal justice system. Specifically, the enabling legislation requires the Commission to consider:

- (1) whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses;
- (2) whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses;
- (3) how to maximize treatment for offenders as a response to offenses committed as a result of opioid addiction.

Section 3 of Act 142 further directs the Sentencing Commission to develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine. In developing this classification system, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences. Finally, as part of the classification proposal, the enabling legislation directs the Commission to consider whether to propose:

- (1) rules of statutory interpretation specifically for criminal provisions;
- (2) the consistent use of *mens rea* terminology in all criminal provisions;
- (3) a comprehensive section of definitions applicable to all criminal provisions;
- (4) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses; and
- (5) a redefinition of what constitutes an attempt in Vermont criminal law, including whether the Model Penal Code's definition of attempt should be adopted in Vermont.

Act 40 (2019), *An act relating to miscellaneous court and Judiciary related amendments*, directs the Sentencing Commission, on or before December 15, 2019, to propose alternatives, in light of 33 V.S.A. § 5204a, for providing the court with jurisdiction over cases where a person under 18 years of age commits a criminal offense that is not a listed crime under 13 V.S.A. § 5301(7) and is not charged with the offense until after turning 18 years of age. The report required under Act 40 is included herein as Attachment D.

Act 32 (2019), *An act relating to sealing and expungement of criminal records*, directs the Sentencing Commission to conduct a comprehensive assessment of the statutes governing the expungement and sealing of criminal history records in Vermont, including reviewing the crimes eligible for expungement or sealing, the process by which criminal history records are expunged or sealed, the mechanism by which expunged or sealed records are indexed, and the effect of sealing or expungement. The report required pursuant to Act 32 regarding expungement was timely submitted as directed by the legislation.

## Background on Sentencing Commission

The enabling legislation set forth individual titles of certain persons who would serve on the Sentencing Commission, as well as certain entities which would make appointments. At its initial meeting on August 7, 2018, Chief Justice Paul Reiber appointed Judge Thomas A. Zonay to serve as Chair of the Commission and Rebecca Turner to serve as Vice-chair. The other members of the Commission were: Chief Superior Judge Brian Gearson, Judge John Treadwell, Senator Richard Sears, Representative Martin LaLonde, David Scherr on behalf of the Attorney General, Defender General Matthew Valerio, Executive Director of the Department of State's Attorneys and Sheriffs John Campbell, Deputy Defender General Marshall Pahl, Windsor County State's Attorney David Cahill, Vermont Bar Association appointee Jordana Levine, Commissioner Lisa Menard<sup>1</sup>, Commissioner Thomas Anderson<sup>2</sup>, Executive Director of the Vermont Center for Crime Victim Services Chris Fenno<sup>3</sup>, and Executive Director of the Vermont Crime Research Group Karen Gennette.

The Sentencing Commission has met 11 times as of the submission of this Report. In addition to reviewing materials provided to it at its meetings, the Sentencing Commission also heard from Judge Michael Kainen. Judge Kainen had been the Executive Director of the prior iteration of the Sentencing Commission. He provided the Commission with his insight into the work of the prior Sentencing Commission and identified where, in his assessment, issues arose that prevented the prior Commission from being able to operate effectively.

In order to most efficiently evaluate the questions and issues it needed to address, the Sentencing Commission concluded that it would be appropriate to appoint committees to address identified tasks and to report back to the full Commission. In furtherance of this determination, Judge Zonay created three committees and apportioned assignments to each as follows:

### **Committee A:**

Whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses (13 V.S.A. § 5452(c)(1));

Whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses (13 V.S.A. § 5452(c)(2)); and

---

<sup>1</sup> Currently Monica Weeber serves on the Commission as the designee for the Commissioner of the Department of Corrections.

<sup>2</sup> Currently Commissioner Michael Shirling serves on the Commission.

<sup>3</sup> Currently Elaine Boyce serves on the Commission as the designee for the Executive Director of the Vermont Center for Crime Victim Services.

Decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses (Act 142, Sec. 3, § 4(D)).

**Committee B:**

How to maximize treatment for offenders as a response to offenses committed as a result of addiction (13 V.S.A. § 5452(c)(3)).

**Committee C:**

Review existing sentencing law and practice to determine whether statutory penalties are appropriate and to address sentencing classification. Also, except for decriminalization under Sec. 3, § 4(D), address the matters identified in Sec. 3, § 4 of enabling legislation.

## Findings and Recommendations

### **1. Whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses**

In considering its charge on this question, the Sentencing Commission, through Committee A, reviewed multiple datasets from the Crime Research Group (CRG) and DOC. CRG data included the following: (1) “Other Charges Filed with Drug Charges 2014-2017,” and (2) “Misdemeanor drug charges referred to diversion statewide 2014-2017.” DOC data relating to incarcerated individuals on the opiate withdrawal scale and those diagnosed with opioid use disorder (OUD) were also reviewed.

The Commission further considered whether it was feasible to create a process to determine (1) whether an offense was committed “as a result of opioid addiction,” and (2) for those offenses determined to have resulted from an opioid addiction whether the offense should then be considered a civil offense.

With respect to the first question, Committee A identified two ways a criminal offense of any nature could be determined to have been “committed as a result of opioid addiction.” First, the State’s Attorney at the charging stage could determine the offense was “committed as a result of opioid addiction” and file a civil rather than a criminal charge (assuming a civil offense is available). Second, the criminal rules could be amended—or a statute enacted—to provide a defendant the right to have a judicial determination of whether an offense was “committed as a result of opioid addiction.” That is, the court would hold an evidentiary hearing to determine whether the charged criminal offense or offenses were “committed as a result of opioid addiction.” Questions regarding the burden of proof in such a hearing (*e.g.*, preponderance or

clear and convincing evidence) and who bears that burden would have to be determined either by rule or by case law in the absence of a statute.

In addition, Committee A noted that what is meant by “committed as a result of opioid addiction” would need to be further defined. Does the offense have to be *exclusively* committed as a result of opioid addiction or only *partially* motivated by addiction? The Commission believes that complete study of this question would require development and analysis of data that has not yet been collected.

Putting aside the potential constitutional and practical challenges of such a scheme, including those which could arise through carving out a specific class of drugs for special and more lenient treatment, the inevitable burdens such a process would place on an already overburdened criminal justice system must also be considered. It would seem highly probable that defendants who use opioids and are charged with a crime would seek to have his/her criminal offense transformed into a civil offense if that result were available.

For those cases in which a determination is made the offense was “committed as a result of opioid addiction,” there would then have to be a civil offense identified. “Civil” penalties often only involve the imposition of a fine. Thus, the Legislature could consider creating a single catch-all civil offense for any criminal case in which it is determined the offense was “committed as a result of opioid addiction” and set a specific fine amount or a fine range to be determined by the court based on the severity of the offense and other factors—*e.g.*, ability to pay. If appropriate, the Legislature also could consider other civil sanctions, as long as they do not actually amount to “punitive” criminal penalties. *See United States v. Ward*, 448 U.S. 242, 249 (1980) (“We turn then to consider whether Congress, despite its manifest intention to establish a civil, remedial mechanism, nevertheless provided for sanctions so punitive as to ‘transfor[m] what was clearly intended as a civil remedy into a criminal penalty.’” (citation omitted)); *Town of Hinesburg v. Dunkling*, 167 Vt. 514, 527 (Vt. 1998).

Alternatively, the Legislature could consider creating a parallel civil code for each criminal offense determined to have been “committed as a result of opioid addiction.” The Legislature would also have to determine whether a defendant has the right to a jury trial, a public defender, and what the State’s burden of proof would be once a criminal case becomes a proceeding involving a civil offense. In addition, the issue of repeat offenders would also need to be addressed and a determination be made as to whether second or subsequent civil offenses would result in criminal prosecution and the conduct would no longer qualify for treatment as a civil matter. A further concern to be addressed relates to the potential collateral consequences even a civil finding may bring upon an individual.

One identified limitation of making historically criminal offenses civil offenses is the lack of sentencing alternatives for civil offenses like those currently available for criminal offenses. *See* 13 V.S.A. § 7030. Indeed, absent legislation expanding the sanctions for civil offenses to include some form of ongoing supervision or a civil commitment law for drug treatment, classifying criminal offenses committed as a result of opioid addiction as civil offenses may have

undesired consequences. While an individual may not wind up with a criminal conviction, he/she is also unlikely to get help for his/her addiction and may pose an ongoing risk to the public.

Finally, the Commission noted that if the intent of this directive is to divert individuals addicted to opioids from the criminal justice system, Vermont currently has a variety of programs for doing so, including through deferred sentences, diversion, and drug treatment courts. These programs are designed to allow a defendant to avoid criminal liability, or reduce liability, provided he/she complies with various conditions, which often include participating in drug treatment. Developing methods to more fully utilize these programs and creating strategies that provide equal access to them should be fully explored and appear to be a more efficient means of achieving the goal of treating criminal offenses truly and solely motivated by opioid or other drug addiction as a public health issue.

**Recommendation:**

The Commission has not voted to recommend making offenses committed as the result of opioid addiction, or any other drug addition, be civil rather than criminal offenses.

The Commission recommends expanding and fully funding the alternative justice options already in existence, such as Diversion, Tamarack, and drug treatments courts. It would also recommend that the Legislature consider the merits of permitting a judge to send a case to Diversion or Tamarack in a manner consistent with constitutional separation of powers and established procedures from other jurisdictions.

The Commission further recommends establishing consistent statewide criteria for drug treatment court eligibility and standard practices for referrals. As to this recommendation, the Commission believes that the development and implementation of drug treatment courts should be done on a statewide basis and not be delegated to the various counties to decide whether to implement such a program, thereby resulting in different opportunities and outcomes for people facing similar issues throughout the State.

**2. Whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses**

As it pertains to Question 2, the Sentencing Commission reviewed other states' efforts at reclassification and "de-felonization" generally. Based on its review, the Commission did not identify any state that has reclassified offenses in the manner contemplated within Question 2. A Vermont Legislative Counsel report from 2017 similarly found that "[n]o U.S. state has taken the step of decriminalizing illicit drugs other than marijuana." However, it does appear that the issue of civil reclassification has come up in certain states—*e.g.*, Hawaii (a legislative report) and Maryland (a proposed bill)—without such reclassification ultimately being adopted in those states.

Although research has not yet uncovered other state efforts to reclassify sale or possession of drugs from criminal to civil offenses, the Commission is aware that other states have undertaken

efforts to “de-felonize” offenses. Accordingly, although outside the scope of Question 2, the Commission reviewed an October 2018 report by the Urban Institute identifying five states that reclassified felony drug possession crimes as misdemeanors; according to the report, those state laws also share certain “policy details” (e.g., weights not specified). The report identifies those states as Alaska, California, Connecticut, Oklahoma, and Utah. *Id.* at 5.

While no formal vote was taken on a specific “de-felonization” recommendation, members of the Sentencing Commission largely agree that the felony weight and/or dosage thresholds for many of the Title 18, Chapter 84 (Possession and Control of Regulated Drugs) crimes do not reflect current personal use estimates for a typical heavy user in Vermont.

**Recommendation:**

The Commission has not voted to recommend classifying the possession or sale of specific, lesser amounts of opioids and other regulated drugs as civil rather than criminal offenses.

**The Legislature should re-examine possession thresholds in Title 18, Chapter 84 and consider increasing the weight and/or dosage upper limits for misdemeanor possession crimes to better reflect current personal use amounts.**

**3. How to maximize treatment for offenders as a response to offenses committed as a result of opioid addiction**

Committee B sent out surveys and interviewed a number of local treatment providers to solicit their perspective on the barriers to accessing treatment. To date, Committee B has not presented any formal recommendations to the Sentencing Commission but will be working in conjunction with the Council for State Governments’ Justice Reinvestment team to develop specific recommendations with respect to this charge. As such, the Commission expects to be addressing this question as it continues its work moving forward.

**4. Develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine**

The Sentencing Commission considered a proposal to classify *all* existing criminal offenses into a scheme consistent with the recommendations set forth in the Act 61 Criminal Code Reclassification Final Report of July 2015.<sup>4</sup> The Commission subsequently reviewed and approved a proposal to automatically classify all existing crimes based on this classification scheme. On March 21, 2019, this proposal was sent to the Chairs of the Senate and House Judiciary Committees as an interim Proposal for Legislation. A copy of the proposal is attached hereto as Attachment A\_Classification Proposal.

---

<sup>4</sup>[http://www.crgvt.org/uploads/5/2/2/5/2222091/act\\_61\\_reclassification\\_of\\_the\\_criminal\\_code\\_final\\_report.pdf](http://www.crgvt.org/uploads/5/2/2/5/2222091/act_61_reclassification_of_the_criminal_code_final_report.pdf)

In developing the proposal, the Commission worked to ensure that it was generally consistent with the direction provided in Act 148 that no maximum terms be increased. As drafted, the proposal incorporated an effective date of July 1, 2020.

As discussed herein in Section 5, the Commission has also considered proposed amendments to classification of certain categories of existing offenses. In considering the classification of these offenses, the Commission applied the proposed classification scheme. Further details of those results as they relate to changes to sentences of imprisonment are discussed in Section 5. When the Commission applied the proposed classification scheme as to fines, it realized that fines would be increased across the board and sometimes substantially. Concerns were raised about the universal increase in fines that this classification scheme would result in, a stark departure from current penalties without any attendant compelling rationale for such an increase consistent with effective uses of criminal punishment.

**Recommendation:**

The Commission recommends enactment of legislation consistent with its interim proposal on Classification submitted on March 21, 2019 as to the scheme for sentences to imprisonment. The Commission will follow-up with a classification scheme as to fines at a later date following further review. A copy of the amended proposal is attached hereto as Attachment B.

**5. Propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies**

In working with the Crime Research Group tableau showing historical data on all criminal statutes charged in Vermont and the distribution of their actual sentences delineated by county, the Sentencing Commission identified four broad categories of offenses—sexual offenses, property offenses, motor vehicle offenses, and crimes against persons. The Commission then reviewed each offense and associated statutory penalty (and actual sentence imposed) within these categories to determine how they should be classified in the proposed classification structure.

The Commission has addressed and voted upon two classification categories, to wit: Sexual Offenses and Property Crimes. The Commission has begun to address, and intends to continue to address, and make future recommendations, as to the classification categories of motor vehicle offenses and crimes against persons.

*(A) Sexual Offenses*

As it pertains to the classification of sexual offenses, the Sentencing Commission voted to recommend the proposed classification structure attached hereto as Attachment B\_Sexual Offenses.

*(B) Property Crimes*

As it pertains to the classification of property crimes, the Sentencing Commission recommends on a vote of 8-6 a classification proposal that creates tiers of offenses based on the dollar amount

of amount of damage or harm. A copy of this proposal is attached hereto as Attachment C\_Property Offenses.

This proposal reduces the maximum potential penalty for the vast majority of property offenses compared to the *status quo*, including “de-felonizing” a large number of current property crimes where the harm or damage is below \$10,000. The proposal does, however, include recommended increases in the current penalties for a small number of crimes. The rationale for the increases was to create consistency among penalties for overlapping offenses, such as credit card fraud and false pretenses.

Concerns were raised about the proposed increases and that the stated rationale ~~for the increases was not a compelling rationale, given that there was no consideration of whether increasing such penalties would be an effective use of criminal punishment.~~ The view by some Commission members was that a general lack of consideration of “the effective uses of criminal punishment” in developing this proposal resulted in arbitrary proposals to increase penalties, which may have the contrary effect intended by the enabling legislation and actually aggravate the problem.

The Commission voted 8-6 to recommend the property crime classification proposal with the uniform subsequent offense enhancement scheme removed and explicitly note for the Legislature the offenses where the potential sentence increased under the proposal. ~~These increases are identified in the highlighted portions of Attachment C.~~

The following members voted in the affirmative: Chief Judge Brian Grearson, Judge John Treadwell, Martin LaLonde, Elaine Boyce, John Campbell, David Cahill, Michael Schirling, and David Scherr. The following members voted in the negative: Karen Gennette, Monica Weeber, Matthew Valerio, Marshall Pahl, Rebecca Turner, and Jordana Levine. Judge Thomas Zonay abstained.

#### **Recommendation:**

The majority of the Commission recommends enactment of legislation consistent with its attached proposals on Classification of sexual offenses and property crimes as appended hereto as Attachment B and Attachment C.

#### **6. Consideration of whether to propose:**

##### **(A) rules of statutory interpretation specifically for criminal provisions**

The Commission recommends that the rules of statutory interpretation remain unchanged. The rules of interpretation that apply specifically to penal statutes are well-understood and there is a substantial body of precedential law that exists. *See, e.g., State v. Brunner*, 2014 VT 62, ¶ 11 (“Under the rule of lenity, we resolve ambiguity in statutory language in favor of the defendant but will not apply the rule if the statute is clear and unambiguous”).

##### **(B) the consistent use of *mens rea* terminology in all criminal provisions**

The Commission supports the use of consistent *mens rea* terminology in enacting and amending criminal statutes. Thus, where terms have substantially identical meanings such as “intentionally,” “purposely” and “willfully,” the Committee suggests that only one of the terms be used. *See State v. Jackowski*, 2006 VT 119 (discussing the similarity of these terms).

All criminal statute should expressly include the necessary culpable mental state. Newly enacted laws should, thus, include the necessary mental state. Additionally, where the Vermont Supreme Court has interpreted a statute to include an unstated *mens rea*, the statute should be amended to explicitly state that mental state.

**(C) a comprehensive section of definitions applicable to all criminal provisions**

The Commission supports the use of consistent terminology by the Legislature in enacting and amending criminal statutes. Where terms or phrases are defined by statute that there be an explicit reference to the statutory definition. *See, e.g.*, 13 V.S.A. § 1021(a)(2) (defining serious bodily injury). The Commission recommends discouraging the use of undefined terms or phrases particularly if those terms are similar to existing defined terms.

**(D) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses**

The Commission is currently reviewing the list of fine-only offenses as developed by CRG with a focus on archaic offenses and offenses that have not been charged within the past ten years. In consultation with interested agencies the Commission intends to develop recommendations to repeal, decriminalize or keep each fine-only offense.

**(E) a redefinition of what constitutes an attempt in Vermont criminal law, including whether the Model Penal Code’s definition of attempt should be adopted in Vermont**

The Commission concluded that the concept of attempt is well understood in Vermont law and is distinguishable from the Model Penal Code definition. An amendment is not warranted under the current state of the law in Vermont.

**7. Providing jurisdiction over cases where a person under 18 years of age commits a criminal offense that is not a listed crime under 13 V.S.A. § 5301(7) and is not charged with the offense until after turning 18 years of age**

Under current law, neither the Family Division nor the Criminal Division of the Superior Court maintains jurisdiction over individuals who commit crimes—other than those listed in 13 V.S.A. § 5301 or in 33 V.S.A. § 5402(a)—prior to obtaining eighteen years of age but are not charged until after obtaining eighteen years of age. The Commission reviewed and adopted on a unanimous vote a recommendation to extend the jurisdiction of the Family Division over such

individuals until their twentieth birthday so long as charges are filed before their nineteenth birthday and the crime was committed when the offender was at least seventeen years of age. A copy of this recommended proposal is attached hereto as Attachment D\_33 VSA 5204a Proposal.<sup>5</sup>

### **Recommendation:**

The Commission recommends enactment of legislation consistent with its attached proposal on amending 33 V.S.A. § 5204a, as appended hereto as Attachment D.

## **8. Deferred Sentences**

On February 9, 2019, the Commission sent an interim proposal to the Chairs of the House and Senate Judiciary Committees recommending the elimination of the 28-year old age limit for eligibility to receive a deferred sentence over the objection of a State's Attorney under 13 V.S.A. § 7041. This recommendation was adopted into law pursuant to Section 18 of Act 77 (2019) and became effective on June 19, 2019.

## **Conclusion**

With submission of this report, that Sentencing Commission has fulfilled its current statutory requirements. Section 5 of Act 142 repeals the statute creating the Vermont Sentencing Commission on July 1, 2021. As indicated herein, the Commission intends to continue its efforts to evaluate additional matters including:

- the classification of additional crimes beyond sexual and property crimes;
- the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses;
- the development of a classification scheme for all fines; and
- the reconciliation of categories of crimes within existing Vermont statutes, to include listed crimes and designated crimes.

The Commission anticipates making further recommendations in a supplemental report to the General Assembly regarding these issues on or before November 30, 2020. The Commission will gladly accept any additional requests from the Legislature until the repeal of the Sentencing Commission statutes takes effect.

---

<sup>5</sup> It should be noted that this proposal will need to be amended when the jurisdiction of the Family Division is extended to include eighteen- and nineteen-year olds pursuant to Act 201 (2018).