

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 133  
3 entitled “An act relating to juvenile jurisdiction” respectfully reports that it has  
4 considered the same and recommends that the House propose to the Senate that  
5 the bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

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

8 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

9 As used in the juvenile judicial proceedings chapters:

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

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

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

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

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

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

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

13           ~~(ii) that an individual who is alleged to have committed an act~~  
14 ~~specified in subsection 5204(a) of this title after attaining the age of 14 but not~~  
15 ~~the age of 16 shall be subject to criminal proceedings as in cases commenced~~  
16 ~~against adults, unless transferred to the court in accordance with the juvenile~~  
17 ~~judicial proceedings chapters;~~

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





1           (2)(A) Jurisdiction over a child with a pending delinquency may be  
2 extended until six months beyond the child’s 19th birthday if the child was  
3 16 or 17 years of age when he or she committed the offense.

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

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

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

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

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

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

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

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

1 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

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

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

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

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

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

16 \* \* \*

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

18 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

19 PROCEEDINGS IN THE FAMILY DIVISION

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

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

1           (2) transfer to the Family Court of a proceeding from the Criminal  
2 Division of the Superior Court as provided in section 5281 of this title.

3           (b) A State’s Attorney may commence a proceeding in the Family Division  
4 of the Superior Court concerning a child who is alleged to have committed an  
5 offense after attaining ~~16~~ 14 years of age but not 22 years of age that could  
6 otherwise be filed in the Criminal Division.

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

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

20           (1) The Department or the community provider shall report the risk level  
21 result of the screening, the number and source of the collateral contacts made,

1 and the recommendation for charging or other alternatives to the State's  
2 Attorney.

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

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

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

18 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

19 (a) A motion may be filed in the Criminal Division of the Superior Court  
20 requesting that a defendant under 22 years of age in a criminal proceeding who  
21 had attained 12 years of age but not 22 years of age at the time the offense is

1 alleged to have been committed be treated as a youthful offender. The motion  
2 may be filed by the State's Attorney, the defendant, or the court on its own  
3 motion.

4 (b) ~~Upon~~ Unless the State's Attorney refers the youth directly to court  
5 diversion pursuant to subsection 5280(e) of this title, upon the filing of a  
6 motion under this section or the filing of a youthful offender petition pursuant  
7 to section 5280 of this title, the Family Division shall hold a hearing pursuant  
8 to section 5283 of this title. Pursuant to section 5110 of this title, the hearing  
9 shall be confidential. Copies of all records relating to the case shall be  
10 forwarded to the Family Division. Conditions of release and any Department  
11 of Corrections supervision or custody shall remain in effect until:

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

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

17 (3) the case is otherwise concluded.

18 (c)(1) If the Family Division rejects the case for youthful offender  
19 treatment pursuant to subsection 5284 of this title, the case shall be transferred  
20 to the Criminal Division. The conditions of release imposed by the Criminal  
21 Division shall remain in effect, and the case shall proceed as though the motion

1 for youthful offender treatment or youthful offender petition had not been  
2 filed.

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

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

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

12 § 5282. REPORT FROM THE DEPARTMENT

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

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

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

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

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

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

8           (1) the Department;

9           (2) the court;

10          (3) the State’s Attorney;

11          (4) the youth, the youth’s attorney, and the youth’s guardian ad litem;

12          (5) the youth’s parent, guardian, or custodian if the youth is under  
13 18 years of age, unless the court finds that disclosure would be contrary to the  
14 best interest of the child;

15          (6) the Department of Corrections; or

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

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

19          § 5283. HEARING IN FAMILY DIVISION

20          (a) Timeline. ~~A~~ Unless the State’s Attorney refers the youth directly to  
21 court diversion pursuant to subsection 5280(e) of this title, a youthful offender

1 ~~status~~ consideration hearing shall be held no later than ~~35~~ 60 days after the  
2 transfer of the case from the Criminal Division or filing of a youthful offender  
3 petition in the Family Division.

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

7 (c) Hearing procedure.

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

13 (2) For individuals who had attained 18 years of age but not 22 years of  
14 age at the time the act is alleged to have been committed, hearings under  
15 5284(a) of this title shall be open to the public. All other youthful offender  
16 proceedings shall be confidential.

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

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

4 Sec. 8. 33 V.S.A. § 5285(d) is amended to read:

5 (d) If a youth's status as a youthful offender is revoked and the case is  
6 transferred to the Criminal Division pursuant to subdivision (c)(2) of this  
7 section, the court shall enter a conviction of guilty based on the admission to or  
8 finding of merits, hold a sentencing hearing and impose sentence. Unless it  
9 serves the interest of justice, the case shall not be transferred back to the  
10 Family Division pursuant to section 5203 of this title. When determining an  
11 appropriate sentence, the court may take into consideration the youth's degree  
12 of progress toward or regression from rehabilitation while on youthful offender  
13 status. The Criminal Division shall have access to all Family Division records  
14 of the proceeding.

15 Sec. 9. 33 V.S.A. § 5286 is amended to read:

16 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

17 (a) If a youth is ~~adjudicated~~ on probation as a youthful offender prior to  
18 reaching 18 years of age, the Family Division shall review the youth's case  
19 before he or she reaches 18 years of age and set a hearing to determine whether  
20 the court's jurisdiction over the youth should be continued past 18 years of  
21 age. The hearing may be joined with a motion to terminate youthful offender

1 status under section 5285 of this title. The court shall provide notice and an  
2 opportunity to be heard at the hearing to the State's Attorney, the youth, the  
3 Department for Children and Families, and the Department of Corrections.

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

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

10 (1) The Department for Children and Families and the Department of  
11 Corrections shall jointly report their recommendations, with supporting  
12 justifications, as to whether the Family Division should continue jurisdiction  
13 over the youth past 18 years of age and, if continued jurisdiction is  
14 recommended, propose a case plan for the youth to ensure compliance with  
15 and completion of the juvenile disposition.

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

19 (d) If the court finds that it is in the best ~~interest~~ interests of the youth and  
20 consistent with community safety to continue the case past 18 years of age, it  
21 shall make an order continuing the court's jurisdiction up to 22 years of age.

1 The Department for Children and Families and the Department of Corrections  
2 shall jointly develop a case plan for the youth and coordinate services and  
3 share information to ensure compliance with and completion of the juvenile  
4 disposition.

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

9 Sec. 10. EFFECTIVE DATE

10 This act shall take effect on passage.

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14 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Representative \_\_\_\_\_

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FOR THE COMMITTEE