

1 S.224

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Juvenile proceedings; implementation of juvenile jurisdiction
5 expansion; rights of victims

6 Statement of purpose of bill as introduced: This bill proposes to pause by one
7 year the expansion of juvenile jurisdiction to 19-year-olds, to enhance the
8 rights of victims in juvenile and youthful offender proceedings, and to make
9 several other modifications to court proceedings in juvenile matters.

10 An act relating to juvenile proceedings

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

12 * * * Pause of Juvenile Jurisdiction Expansion * * *

13 Sec. 1. 2018 Acts and Resolves No. 201, Sec. 21 is amended to read:

14 Sec. 21. EFFECTIVE DATES

15 * * *

16 (d) Secs. 17–19 shall take effect on ~~July 1, 2022~~ July 1, 2023.

17 Sec. 2. 2020 Acts and Resolves No. 124, Sec. 12 is amended to read:

18 Sec. 12. EFFECTIVE DATES

19 (a) Secs. 3 (~~33 V.S.A. § 510(e)~~) (33 V.S.A. § 5103(c)) and 7 (33 V.S.A.
20 § 5206) shall take effect on ~~July 1, 2022~~ July 1, 2023.

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* * * Victim's Compensation and Restitution in Juvenile Proceedings * * *

Sec. 3. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(i) Upon receipt of a court order to seal a record relating to an offense for which there is an identifiable victim, a State's Attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a State's Attorney pursuant to this subsection shall be available only to victims' advocates, the Victims' Compensation Program, and the victim and shall otherwise be confidential. The Victim's Compensation Program may be provided with a copy, redacted of all information identifying the youth or delinquent child, of the affidavit for the sole purpose of verifying the expenses in a victim's compensation application submitted pursuant to 13 V.S.A. § 5353.

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Sec. 4. 33 V.S.A. § 5235 is amended to read:

§ 5235. JUVENILE RESTITUTION

* * *

1 Sec. 6. 13 V.S.A. § 5305 is amended to read:

2 § 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

3 (a) ~~Victims, other than victims of acts of delinquency,~~ and affected persons
4 shall have the right to request notification by the agency having custody of the
5 defendant before the defendant is released, including a release on bail or
6 conditions of release, furlough, or other community program; upon
7 termination or discharge from probation; or whenever the defendant escapes,
8 is recaptured, dies, or receives a pardon or commutation of sentence. Notice
9 shall be given to the victim or affected person as expeditiously as possible at
10 the address or telephone number provided to the agency having custody of the
11 defendant by the person requesting notice. Any address or telephone number
12 so provided shall be kept confidential. The prosecutor's office shall ensure
13 that victims are made aware of their right to notification of an offender's
14 scheduled release date pursuant to this section. Notwithstanding this
15 subsection, the right to information for victims of delinquent acts is governed
16 by 33 V.S.A. chapters 52 and 52A.

17 * * *

18 Sec. 7. 33 V.S.A. § 5110 is amended to read:

19 § 5110. CONDUCT OF HEARINGS

20 (a) Hearings under the juvenile judicial proceedings chapters shall be
21 conducted by the court without a jury and shall be confidential.

1 (b) The general public shall be excluded from hearings under the juvenile
2 judicial proceedings chapters, and only the parties, their counsel, witnesses,
3 persons accompanying a party for ~~his or her~~ the party's assistance, and such
4 other persons as the court finds to have a proper interest in the case or in the
5 work of the court, including a foster parent or a representative of a residential
6 program where the child resides, may be admitted by the court. An individual
7 without party status seeking inclusion in the hearing in accordance with this
8 subsection may petition the court for admittance by filing a request with the
9 clerk of the court. ~~This subsection shall not prohibit a victim's exercise of his
10 or her rights under sections 5233 and 5234 of this title, and as otherwise
11 provided by law.~~

12 (c) There shall be no publicity given by any person to any proceedings
13 under the authority of the juvenile judicial proceedings chapters except with
14 the consent of the child, the child's guardian ad litem, and the child's parent,
15 guardian, or custodian. A person who violates this provision may be subject to
16 contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family
17 Proceedings. This subsection shall not prohibit a victim from discussing
18 underlying facts of the alleged offense that resulted in death or physical,
19 emotional, or financial injury to the victim, provided that, unless otherwise
20 provided by law or court order, a victim shall not disclose what occurs during a
21 court proceeding, or information learned through a court proceeding that is not

1 an underlying fact of the alleged offense that resulted in death or physical,
2 emotional, or financial injury to the victim.

3 (d) This section shall not prohibit a victim's exercise of rights provided by
4 section 5234 of this title and as otherwise provided by law.

5 Sec. 8. 33 V.S.A. § 5126 is added to read:

6 § 5126. INFORMATION FROM LAW ENFORCEMENT AGENCY

7 (a) Information to all victims in juvenile and youthful offender
8 proceedings. After initial contact between a victim and a law enforcement
9 agency responsible for investigating the offense, the agency shall promptly
10 give in writing to the victim:

11 (1) an explanation of the victim's rights under this chapter and chapters
12 52 and 52A of this title; and

13 (2) information concerning the availability of:

14 (A) assistance to victims, including medical, housing, counseling,
15 and emergency services;

16 (B) compensation for victims under 13 V.S.A. chapter 167 and the
17 name, street address, and telephone number of the Center for Crime Victim
18 Services;

19 (C) protection for the victim, including protective court orders; and

1 (D) access by the victim and the offender to records related to the
2 case that are public under the provisions of 1 V.S.A. chapter 5, subchapter 3
3 (access to public records).

4 (b) Information to victims of listed crimes. As soon as practicable, the law
5 enforcement agency shall use reasonable efforts to give to the victim of a listed
6 crime, as relevant, all of the following:

7 (1) information as to the offender's identity unless inconsistent with law
8 enforcement purposes;

9 (2) information as to whether the offender has been taken into custody;

10 (3) the file number of the case and the name, office street address, and
11 telephone number of the law enforcement officer currently assigned to
12 investigate the case;

13 (4) the prosecutor's name, office street address, and telephone number;

14 (5) an explanation that no individual is under an obligation to respond to
15 questions that may be asked outside a courtroom or deposition; and

16 (6) information concerning any conditions of release imposed on the
17 offender prior to an initial court appearance, unless otherwise limited by court
18 order.

1 Sec. 9. 33 V.S.A. § 5127 is added to read:

2 § 5127. VICTIM'S RIGHT TO PRESENCE OF VICTIM'S ADVOCATE

3 When a victim in a juvenile or youthful offender proceeding is ordered by
4 the court to attend or has a right to attend the proceeding, the victim may be
5 accompanied at the proceeding by a victim's advocate.

6 Sec. 10. 33 V.S.A. § 5234 is amended to read:

7 § 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
8 INVOLVING A LISTED CRIME

9 (a) The victim in a delinquency proceeding involving a listed crime shall
10 have the following rights:

11 (1) To be notified by the prosecutor's office in a timely manner of the
12 following:

13 (A) when a delinquency petition has been filed, the name of the child
14 and any conditions of release initially ordered for the child or modified by the
15 court ~~that are related to the victim or a member of the victim's family or~~
16 current household, unless otherwise limited by court order;

17 (B) ~~his or her~~ the victim's rights as provided by law, information
18 regarding how a case proceeds through a delinquency proceeding, the
19 confidential nature of delinquency proceedings, and that it is unlawful to
20 disclose confidential information concerning the proceedings to another
21 person;

1 (C) when a predispositional or dispositional court proceeding is
2 scheduled to take place and when a court proceeding of which ~~he or she~~ the
3 victim has been notified will not take place as scheduled; and

4 (D) whether delinquency has been found and disposition has
5 occurred, and any conditions of release or conditions of probation ~~that are~~
6 ~~related to the victim or a member of the victim's family or current household~~
7 and any restitution, ~~when ordered~~ unless otherwise limited by court order.

8 (2) To file with the court a written or recorded statement of the impact
9 of the delinquent act on the victim and the need for restitution.

10 (3) To be present during all court proceedings subject to the provisions
11 of Rule 615 of the Vermont Rules of Evidence and to express reasonably the
12 victim's views concerning the offense and the youth, to attend the disposition
13 hearing and to present a victim impact statement, including testimony in
14 support of ~~his or her~~ the victim's claim for restitution pursuant to section 5235
15 of this title, and to be notified as to the disposition, including probation. The
16 court shall consider the victim's statement when ordering disposition. ~~The~~
17 ~~victim shall not be personally present at any portion of the disposition hearing~~
18 ~~except to present a victim impact statement or to testify in support of his or her~~
19 ~~claim for restitution unless the court finds that the victim's presence is~~
20 ~~necessary in the interest of justice.~~

1 (4) ~~Upon request, to~~ To be notified by the agency having custody of the
2 delinquent child before ~~he or she~~ the victim is discharged from a secure or
3 staff-secured residential facility. The name of the facility shall not be
4 disclosed. An agency's inability to give notification shall not preclude the
5 release. However, in such an event, the agency shall take reasonable steps to
6 give notification of the release as soon thereafter as practicable. Notification
7 efforts shall be deemed reasonable if the agency attempts to contact the victim
8 at the address or telephone number provided to the agency in the request for
9 notification.

10 (5) To have the court take ~~his or her~~ the victim's views into
11 consideration in the court's disposition order. If the victim is not present, the
12 court shall consider whether the victim has expressed, either orally or in
13 writing, views regarding disposition and shall take those views into account
14 when ordering disposition.

15 (6) [Repealed.]

16 (b) The prosecutor's office shall keep the victim informed and consult with
17 the victim through the delinquency proceedings.

1 Sec. 11. 33 V.S.A. § 5234a is amended to read:

2 § 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
3 INVOLVING A NONLISTED CRIME

4 (a) The victim in a delinquency proceeding involving an offense that is not
5 a listed crime shall have the following rights:

6 (1) To be notified by the prosecutor's office in a timely manner of the
7 following:

8 (A) ~~his or her~~ the victim's rights as provided by law, information
9 regarding how a delinquency proceeding is adjudicated, the confidential nature
10 of juvenile proceedings, and that it is unlawful to disclose confidential
11 information concerning the proceedings;

12 (B) when a delinquency petition is filed;

13 (C) the child's name and the conditions of release ordered for the
14 child or modified by the court ~~if the conditions relate to the victim or a member~~
15 ~~of the victim's family or current household~~, unless otherwise limited by court
16 order; and

17 (D) when a dispositional court proceeding is scheduled to take place
18 and when a court proceeding of which ~~he or she~~ the victim has been notified
19 will not take place as scheduled.

20 (2) That delinquency has been found and disposition has occurred, ~~and~~
21 any conditions of release or conditions of probation ~~that are related to the~~

1 ~~victim or a member of the victim's family or current household~~ and any
2 restitution ~~ordered~~, unless otherwise limited by court order.

3 (3) To file with the court a written or recorded statement of the impact
4 of the delinquent act on the victim and any need for restitution.

5 (4) To attend the disposition hearing for the sole purpose of presenting
6 to the court a victim impact statement, including testimony in support of ~~his or~~
7 ~~her~~ the victim's claim for restitution pursuant to section 5235 of this title. The
8 victim shall not be personally present at any portion of the disposition hearing
9 except to present a victim impact statement or to testify in support of ~~his or her~~
10 the victim's claim for restitution unless the court finds that the victim's
11 presence is necessary in the interest of justice.

12 (5) To be notified by the agency having custody of the child before the
13 child is released from a residential facility.

14 (6) To have the court take ~~his or her~~ the victim's views into
15 consideration in the court's disposition order. If the victim is not present, the
16 court shall consider whether the victim has expressed, either orally or in
17 writing, views regarding disposition and shall take those views into account
18 when ordering disposition. The court shall order that the victim be notified as
19 to the identity of the child upon disposition if the court finds that release of the
20 child's identity to the victim is in the best interests of both the child and the
21 victim and serves the interests of justice.

1 (b) The prosecutor's office shall keep the victim informed and consult with
2 the victim through the delinquency proceedings.

3 Sec. 12. 33 V.S.A. § 5288 is amended to read:

4 § 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER

5 PROCEEDINGS

6 (a) The victim in a proceeding involving a youthful offender shall have the
7 following rights:

8 (1) to be notified by the prosecutor in a timely manner;

9 (A) when a court proceeding is scheduled to take place and when a
10 court proceeding to which ~~he or she~~ the victim has been notified will not take
11 place as scheduled; and

12 (B) of any conditions of release or conditions of probation and of any
13 restitution, unless otherwise limited by court order;

14 (2) to be present during all court proceedings subject to the provisions of
15 Rule 615 of the Vermont Rules of Evidence and to express reasonably ~~his or~~
16 ~~her~~ the victim's views concerning the offense and the youth;

17 (3) to ~~request notification~~ be notified by the agency having custody of
18 the youth before the youth is released from a residential facility;

19 (4) to be notified by the prosecutor as to the final disposition of the case;

20 (5) to be notified by the prosecutor of the victim's rights under this
21 section.

1 (b) In accordance with court rules, at a hearing on a motion for youthful
2 offender treatment, the court shall ask if the victim is present and, if so,
3 whether the victim would like to be heard regarding disposition. In ordering
4 disposition, the court shall consider any views offered at the hearing by the
5 victim. If the victim is not present, the court shall ask whether the victim has
6 expressed, either orally or in writing, views regarding disposition and shall
7 take those views into consideration in ordering disposition.

8 (c) No youthful offender proceeding shall be delayed or voided by reason
9 of the failure to give the victim the required notice or the failure of the victim
10 to appear.

11 (d) As used in this section, “victim” shall have the same meaning as in
12 13 V.S.A. § 5301(4).

13 (e) This section shall not prohibit a victim from discussing underlying facts
14 of the alleged offense that resulted in death or physical, emotional, or financial
15 injury to the victim, provided that, unless otherwise provided by law or court
16 order, a victim shall not disclose what occurs during a court proceeding, or
17 information learned through a court proceeding that is not an underlying fact of
18 the alleged offense that resulted in death or physical, emotional, or financial
19 injury to the victim.

20 * * * Public Safety Requirement in Juvenile and Youthful
21 Offender Cases * * *

1 Sec. 13. 33 V.S.A. § 5284 is amended to read:

2 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
3 ORDER

4 (a)(1) In a hearing on a motion for youthful offender status, the court shall
5 first consider whether public safety will be protected by treating the youth as a
6 youthful offender. If the court finds that public safety will not be protected by
7 treating the youth as a youthful offender, the court shall deny the motion and
8 transfer the case to the Criminal Division of the Superior Court pursuant to
9 subsection 5281(d) of this title. If the court finds that public safety will be
10 protected by treating the youth as a youthful offender, the court shall proceed
11 to make a determination under subsection (b) of this section.

12 (2) When determining whether public safety will be protected by
13 treating the youth as a youthful offender, the court shall consider, on the basis
14 of the evidence admitted:

15 (A) the nature and circumstances of the charge and whether violence
16 was involved;

17 (B) the youth's mental health treatment history and needs;

18 (C) the youth's substance abuse history and needs;

19 (D) the youth's residential housing status;

20 (E) the youth's employment and educational situation;

21 (F) whether the youth has complied with conditions of release;

- 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).
- 16 (b) The State’s Attorney of the county where the juvenile petition is
- 17 pending may move in the Family Division of the Superior Court for an order
- 18 transferring jurisdiction under subsection (a) of this section at any time prior to
- 19 adjudication on the merits. The filing of the motion to transfer jurisdiction
- 20 shall automatically stay the time for the hearing provided for in section 5225 of

1 this title, which stay shall remain in effect until such time as the Family
2 Division of the Superior Court may deny the motion to transfer jurisdiction.

3 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)
4 of this section, the Family Division of the Superior Court shall conduct a
5 hearing in accordance with procedures specified in subchapter 2 of this chapter
6 to determine whether:

7 (1) there is probable cause to believe that the child committed the
8 charged offense; and

9 (2) public safety and the interests of the community would not be served
10 by treatment of the child under the provisions of law relating to the Family
11 Division of the Superior Court and delinquent children.

12 (d) In making its determination as required under subsection (c) of this
13 section, the court may consider, among other matters:

14 (1) the maturity of the child as determined by consideration of ~~his or her~~
15 the child's age, home, and environment; emotional, psychological, and
16 physical maturity; and relationship with and adjustment to school and the
17 community;

18 (2) the extent and nature of the child's prior record of delinquency;

19 (3) the nature of past treatment efforts and the nature of the child's
20 response to them, including the child's mental health treatment and substance
21 abuse treatment and needs;

1 Sec. 15. 33 V.S.A. § 5280 is amended to read:

2 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

3 PROCEEDINGS IN THE FAMILY DIVISION

4 * * *

5 (d)(1) Within 15 days after the commencement of a youthful offender
6 proceeding pursuant to subsection (a) of this section, ~~the youth shall be offered~~
7 ~~a risk and needs screening~~ the court shall notify the youth that the youth is
8 required to complete a risk and needs screening, which shall be conducted by
9 the Department or by a community provider that has contracted with the
10 Department to provide risk and needs screenings. The notice shall inform the
11 youth that youthful offender treatment may be denied if the youth fails to
12 participate in the risk and needs screening.

13 (2) The risk and needs screening shall be completed prior to the youthful
14 offender status hearing held pursuant to section 5283 of this title. Unless the
15 court extends the period for the risk and needs screening for good cause
16 shown, the Family Division shall reject the case for youthful offender
17 treatment if the youth does not complete the risk and needs screening within
18 15 days of the offer for the risk and needs screening.

19 ~~(4)~~(3) The Department or the community provider shall report the risk
20 level result of the screening, the number and source of the collateral contacts

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

3 ~~(2)~~(4) 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 * * *

10 * * * Psychosexual Evaluation * * *

11 Sec. 16. 33 V.S.A. § 5230 is amended to read:

12 § 5230. DISPOSITION CASE PLAN

13 * * *

14 (d) Psychosexual evaluation. For purposes of determining appropriate
15 conditions of probation for a disposition case plan under this section, the court
16 may order a psychosexual evaluation for a child charged with:

17 (1) lewd and lascivious conduct in violation of 13 V.S.A. § 2601;

18 (2) lewd and lascivious conduct with a child in violation of 13 V.S.A.

19 § 2602;

20 (3) sexual assault in violation of 13 V.S.A. § 3252;

21 (4) aggravated sexual assault in violation of 13 V.S.A. § 3253;

1 (5) aggravated sexual assault of a child in violation of 13 V.S.A.

2 § 3253a;

3 (6) kidnapping with intent to commit sexual assault in violation of

4 13 V.S.A. § 2405(a)(1)(D); or

5 (7) an offense involving sexual exploitation of children in violation of

6 13 V.S.A. chapter 64.

7 * * * Report on Secure Placements * * *

8 Sec. 17. REPORT

9 (a) On or before December 1, 2022, the Department for Children and
10 Families shall report to the Senate and House Committees on Judiciary and on
11 Institutions on the availability of secure placements and transitional housing
12 for 18- and 19-year-olds subject to juvenile and youthful offender proceedings.

13 The report shall include:

14 (1) both current and future options for secure placements, a plan to
15 ensure that the placements are available for youth going forward, a description
16 of the appropriate services to be provided, and a recommendation as to whether
17 dual custody with the Department of Corrections should be considered; and

18 (2) a progress report on the requirement of Secs. 1 and 2 of this act that
19 the Raise the Age initiative take effect on July 1, 2023.

20 (b) On or before July 1, 2022, the Department for Children and Families
21 shall file a preliminary report to the Joint Legislative Justice Oversight

1 Committee describing the progress made toward completion of the final report
2 required by subsection (a) of this section.

3 * * * Effective Date * * *

4 Sec. 18. EFFECTIVE DATE

5 This act shall take effect on passage.