

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 224
3 entitled “An act relating to juvenile proceedings” 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 * * * Pause of Juvenile Jurisdiction Expansion * * *

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

9 Sec. 21. EFFECTIVE DATES

10 * * *

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

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

13 Sec. 12. EFFECTIVE DATES

14 (a) Secs. 3 (~~33 V.S.A. § 510(e)~~) (33 V.S.A. § 5103(c)) and 7 (33 V.S.A.
15 § 5206) shall take effect on ~~July 1, 2022~~ July 1, 2023.

16 * * *

17 * * * Victim’s Compensation and Restitution in Juvenile Proceedings * * *

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

19 § 5119. SEALING OF RECORDS

20 * * *

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

12 * * *

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

14 § 5235. JUVENILE RESTITUTION

15 * * *

16 (e) In the event the juvenile is unable to pay the restitution judgment order
17 at the time of disposition, the court shall fix the amount thereof, which shall
18 not exceed an amount the juvenile can or will be able to pay, ~~and shall fix the~~
19 ~~manner of performance or refer to a restorative justice program that will~~
20 ~~address how loss resulting from the delinquency will be addressed, and~~
21 establish a restitution payment schedule based upon the juvenile’s current and

1 reasonably foreseeable future ability to pay, subject to modification under
2 section 5264 of this title.

3 * * *

4 (k)(1) The Restitution Unit may bring an action to enforce a restitution
5 order issued under this section in the Superior or Small Claims Court of the
6 county where the offender resides or in the county where the order was issued.
7 In an action under this subsection, a restitution order issued in a juvenile
8 proceeding shall be enforceable in Superior or Small Claims Court in the same
9 manner as a civil judgment. Superior and Small Claims Court filing fees shall
10 be waived for an action under this subsection and for an action to renew a
11 restitution judgment.

12 (2) An action under this subsection may be brought only after the
13 offender reaches 18 years of age and shall not be subject to any limitations
14 period.

15 (3) For purposes of this subsection, a restitution order issued in a
16 juvenile proceeding shall not be confidential. The sealing of a juvenile record
17 shall not affect the authority of the Restitution Unit to enforce a restitution
18 order in the same manner as a civil judgment under subdivision (1) of this
19 subsection.

20 * * * Rights of Victims in Juvenile and Youthful Offender Proceedings * * *

21 Sec. 5. 13 V.S.A. § 5304 is amended to read:

1 § 5304. VICTIMS ASSISTANCE PROGRAM

2 * * *

3 (2) Notification. ~~Victims, other than victims of acts of delinquency,~~
4 shall be notified in a timely manner when a court proceeding involving their
5 case is scheduled to take place and when a court proceeding to which they
6 have been summoned will not take place as scheduled. Victims shall also be
7 notified as to the final disposition of the case, and shall be notified of their
8 right to request notification of a person's release or escape under section 5305
9 of this title. Notwithstanding this subdivision, the notification rights of victims
10 of delinquent acts are governed by 33 V.S.A. chapters 52 and 52A.

11 * * *

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

13 § 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

14 (a) ~~Victims, other than victims of acts of delinquency,~~ and affected persons
15 shall have the right to request notification by the agency having custody of the
16 defendant before the defendant is released, including a release on bail or
17 conditions of release, furlough, or other community program; upon
18 termination or discharge from probation; or whenever the defendant escapes,
19 is recaptured, dies, or receives a pardon or commutation of sentence. Notice
20 shall be given to the victim or affected person as expeditiously as possible at
21 the address or telephone number provided to the agency having custody of the

1 defendant by the person requesting notice. Any address or telephone number
2 so provided shall be kept confidential. The prosecutor's office shall ensure
3 that victims are made aware of their right to notification of an offender's
4 scheduled release date pursuant to this section. Notwithstanding this
5 subsection, the right to information for victims of delinquent acts is governed
6 by 33 V.S.A. chapters 52 and 52A.

7 * * *

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

9 § 5110. CONDUCT OF HEARINGS

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

12 (b) The general public shall be excluded from hearings under the juvenile
13 judicial proceedings chapters, and only the parties, their counsel, witnesses,
14 persons accompanying a party for ~~his or her~~ the party's assistance, and such
15 other persons as the court finds to have a proper interest in the case or in the
16 work of the court, including a foster parent or a representative of a residential
17 program where the child resides, may be admitted by the court. An individual
18 without party status seeking inclusion in the hearing in accordance with this
19 subsection may petition the court for admittance by filing a request with the
20 clerk of the court. ~~This subsection shall not prohibit a victim's exercise of his~~

1 ~~or her rights under sections 5233 and 5234 of this title, and as otherwise~~
2 ~~provided by law.~~

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

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

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

18 § 5126. INFORMATION FROM LAW ENFORCEMENT AGENCY

19 (a) Information to all victims in juvenile and youthful offender
20 proceedings. After initial contact between a victim and a law enforcement

1 agency responsible for investigating the offense, the agency shall promptly
2 give in writing to the victim:

3 (1) an explanation of the victim’s rights under this chapter and chapters
4 52 and 52A of this title; and

5 (2) information concerning the availability of:

6 (A) assistance to victims, including medical, housing, counseling,
7 and emergency services;

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

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

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

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

18 (1) information as to the offender’s identity unless inconsistent with law
19 enforcement purposes;

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

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

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

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

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

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

19 (3) To be present during all court proceedings subject to the provisions
20 of Rule 615 of the Vermont Rules of Evidence and to express reasonably the
21 victim's views concerning the offense and the youth, to attend the disposition

1 hearing ~~and~~ to present a victim impact statement ~~and to express reasonably the~~
2 ~~victim's views concerning the offense and the youth~~, including testimony in
3 support of ~~his or her~~ the victim's claim for restitution pursuant to section 5235
4 of this title, ~~and~~ to be notified as to the disposition, including probation, ~~and to~~
5 ~~submit oral or written statements to the court at such other times as the court~~
6 ~~may allow~~. The court shall consider the victim's statement when ordering
7 disposition. ~~The victim shall not be personally present at any portion of the~~
8 ~~disposition hearing except to present a victim impact statement or to testify in~~
9 ~~support of his or her claim for restitution unless the court finds that the~~
10 ~~victim's presence is necessary in the interest of justice.~~

11 (4) ~~Upon request, to~~ To be notified by the agency having custody of the
12 delinquent child before ~~he or she~~ the victim child is ~~discharged~~ released into
13 the community from a secure or staff-secured residential facility. The name of
14 the facility shall not be disclosed. An agency's inability to give notification
15 shall not preclude the release. However, in such an event, the agency shall
16 take reasonable steps to give notification of the release as soon thereafter as
17 practicable. Notification efforts shall be deemed reasonable if the agency
18 attempts to contact the victim at the address or telephone number provided to
19 the agency in the request for notification.

20 (5) To have the court take ~~his or her~~ the victim's views into
21 consideration in the court's disposition order. If the victim is not present, the

1 court shall consider whether the victim has expressed, either orally or in
2 writing, views regarding disposition and shall take those views into account
3 when ordering disposition.

4 (6) [Repealed.]

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

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

8 § 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
9 INVOLVING A NONLISTED CRIME

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

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

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

18 (B) when a delinquency petition is filed;

19 (C) the child's name and the conditions of release ordered for the
20 child or modified by the court ~~if the conditions relate to the victim or a member~~

1 ~~of the victim's family or current household~~, unless otherwise limited by court
2 order; and

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

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

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

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

19 (5) To be notified by the agency having custody of the child, if agreed to
20 by the parties, before the child is released into the community from a secure or
21 staff secured residential facility.

1 (2) to be present during all court proceedings subject to the provisions of
2 Rule 615 of the Vermont Rules of Evidence ~~and to express reasonably his or~~
3 ~~her views concerning the offense and the youth, to attend the disposition~~
4 ~~hearing to present a victim impact statement and to express reasonably the~~
5 ~~victim’s views concerning the offense and the youth, including testimony in~~
6 ~~support of the victim’s claim for restitution, and to submit oral or written~~
7 ~~statements to the court at such other times as the court may allow. The court~~
8 ~~shall consider the victim’s statement when ordering disposition;~~

9 (3) to ~~request notification~~ be notified by the agency having custody of
10 the youth before the youth is released into the community from a secure or
11 staff secured residential facility;

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

13 (5) to be notified by the prosecutor of the victim’s rights under this
14 section.

15 (b) In accordance with court rules, at a hearing on a motion for youthful
16 offender treatment, the court shall ask if the victim is present and, if so,
17 whether the victim would like to be heard regarding disposition. In ordering
18 disposition, the court shall consider any views offered at the hearing by the
19 victim. If the victim is not present, the court shall ask whether the victim has
20 expressed, either orally or in writing, views regarding disposition and shall
21 take those views into consideration in ordering disposition.

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

4 (d) As used in this section, “victim” shall have the same meaning as in
5 13 V.S.A. § 5301(4).

6 (e) This section shall not prohibit a victim from discussing underlying facts
7 of the alleged offense that resulted in death or physical, emotional, or financial
8 injury to the victim, provided that, unless otherwise provided by law or court
9 order, a victim shall not disclose what occurs during a court proceeding, or
10 information learned through a court proceeding that is not an underlying fact of
11 the alleged offense that resulted in death or physical, emotional, or financial
12 injury to the victim.

13 * * * Public Safety Requirement in Juvenile and Youthful

14 Offender Cases * * *

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

16 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
17 ORDER

18 (a)(1) In a hearing on a motion for youthful offender status, the court shall
19 first consider whether public safety will be protected by treating the youth as a
20 youthful offender. If the court finds that public safety will not be protected by
21 treating the youth as a youthful offender, the court shall deny the motion and

1 transfer the case to the Criminal Division of the Superior Court pursuant to
2 subsection 5281(d) of this title. If the court finds that public safety will be
3 protected by treating the youth as a youthful offender, the court shall proceed
4 to make a determination under subsection (b) of this section.

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

8 (A) the nature and circumstances of the charge and whether violence
9 was involved;

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

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

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

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

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

15 (G) the youth's criminal record and whether the youth has engaged in
16 subsequent criminal or delinquent behavior since the original charge;

17 (H) whether supervising the youth on youthful offender probation is
18 appropriate considering the nature of the charged offense and the age and
19 specialized needs of the youth;

20 (I) whether the youth has connections to the community; and

- 1 (5) murder as defined in 13 V.S.A. § 2301;
- 2 (6) manslaughter as defined in 13 V.S.A. § 2304;
- 3 (7) kidnapping as defined in 13 V.S.A. § 2405;
- 4 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 5 (9) maiming as defined in 13 V.S.A. § 2701;
- 6 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 7 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- 8 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
9 § 1201(c).

10 (b) The State’s Attorney of the county where the juvenile petition is
11 pending may move in the Family Division of the Superior Court for an order
12 transferring jurisdiction under subsection (a) of this section at any time prior to
13 adjudication on the merits. The filing of the motion to transfer jurisdiction
14 shall automatically stay the time for the hearing provided for in section 5225 of
15 this title, which stay shall remain in effect until such time as the Family
16 Division of the Superior Court may deny the motion to transfer jurisdiction.

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

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

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

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

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

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

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

16 (4) the nature and circumstances of the alleged offense, including
17 whether the alleged offense was committed in an aggressive, violent,
18 premeditated, or willful manner;

19 (5) the nature of any personal injuries resulting from or intended to be
20 caused by the alleged act;

1 (6) the prospects for rehabilitation of the child by use of procedures,
2 services, and facilities available through juvenile proceedings;

3 (7) whether the protection of the community would be better served by
4 transferring jurisdiction from the Family Division to the Criminal Division of
5 the Superior Court;

6 (8) the youth’s residential housing status;

7 (9) the youth’s employment and educational situation;

8 (10) whether the youth has complied with conditions of release;

9 (11) the youth’s criminal record and whether the youth has engaged in
10 subsequent criminal or delinquent behavior since the original charge;

11 (12) whether the youth has connections to the community; and

12 (13) the youth’s history of violence and history of illegal or violent
13 conduct involving firearms.

14 * * *

15 * * * Youthful Offender Risk and Needs Screening * * *

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

17 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

18 PROCEEDINGS IN THE FAMILY DIVISION

19 * * *

20 (d)(1) Within 15 days after the commencement of a youthful offender

21 proceeding pursuant to subsection (a) of this section, ~~the youth shall be offered~~

1 ~~a risk and needs screening~~ the court shall notify the youth that the youth is
2 required to complete a risk and needs screening, which shall be conducted by
3 the Department or by a community provider that has contracted with the
4 Department to provide risk and needs screenings. The notice shall inform the
5 youth that youthful offender **treatment status** may be denied if the youth fails to
6 participate in the risk and needs screening.

7 (2) The risk and needs screening shall be completed prior to the youthful
8 offender status hearing held pursuant to section 5283 of this title. Unless the
9 court extends the period for the risk and needs screening for good cause
10 shown, the Family Division shall reject the case for youthful offender
11 treatment if the youth does not complete the risk and needs screening within
12 15 days of the offer for the risk and needs screening.

13 ~~(4)~~(3) The Department or the community provider shall report the risk
14 level result of the screening, the number and source of the collateral contacts
15 made, and the recommendation for charging or other alternatives to the State's
16 Attorney.

17 ~~(2)~~(4) Information related to the present alleged offense directly or
18 indirectly derived from the risk and needs screening or other conversation with
19 the Department or community-based provider shall not be used against the
20 youth in the youth's criminal or juvenile case for any purpose, including

1 impeachment or cross-examination. However, the fact of participation in risk
2 and needs screening may be used in subsequent proceedings.

3 * * *

4 * * * Psychosexual Evaluation * * *

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

6 § 5230. DISPOSITION CASE PLAN

7 * * *

8 (d) Psychosexual evaluation. For purposes of determining appropriate
9 conditions of probation for a disposition case plan under this section, the court
10 may order a psychosexual evaluation if clinically indicated for a child charged
11 with:

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

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

14 § 2602;

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

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

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

18 § 3253a;

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

20 13 V.S.A. § 2405(a)(1)(D); or

1 (7) an offense involving sexual exploitation of children in violation of
2 13 V.S.A. chapter 64.

3 *** Interests of Justice Hearing ***

4 Sec. 17. 33 V.S.A. § 5294 is added to read:

5 § 5294. INTERESTS OF JUSTICE HEARING

6 No later than the next business day after a juvenile who is awaiting trial or
7 other legal process and who is treated as an adult for prosecution in the
8 Criminal Division is taken into custody, the court shall hold a hearing and
9 determine whether to issue a written order, pursuant to 34 U.S.C.
10 § 11133(a)(11)(B), that it is in the interests of justice to hold the juvenile in a
11 jail or other secure facility for adults owned or operated by the Department of
12 Corrections and, if such an order is issued, whether to allow sight or sound
13 contact with adult inmates. Hearings held and orders issued pursuant to this
14 section shall conform with the requirements of 34 U.S.C. § 11133(a)(11)(B),
15 including the criteria set forth therein.

16 * * * Report on Secure Placements * * *

17
18 Sec. 18. REPORT

19 (a) On or before December 1, 2022, the Department for Children and
20 Families shall report to the Senate and House Committees on Judiciary and on
21 Institutions on the availability of secure placements and transitional housing

1 for 18- and 19-year-olds subject to juvenile and youthful offender proceedings.

2 The report shall include:

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

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

9 (b) On or before July 1, 2022, the Department for Children and Families
10 shall file a preliminary report to the Joint Legislative Justice Oversight
11 Committee describing the progress made toward completion of the final report
12 required by subsection (a) of this section.

13 * * * Effective Date * * *

14 Sec. 19. EFFECTIVE DATE

15 This act shall take effect on passage.

16
17
18 (Committee vote: _____)

19 _____
20 Representative _____

21 FOR THE COMMITTEE