

1 Introduced by Committee on Judiciary

2 Date:

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

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

9 An act relating to juvenile proceedings

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

11 * * * Pause of Juvenile Jurisdiction Expansion * * *

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

13 Sec. 21. EFFECTIVE DATES

14 * * *

15 (d) Secs. 17–19 shall take effect on ~~July 1, 2022~~ July 1, 2024.

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

17 Sec. 12. EFFECTIVE DATES

18 (a) Secs. 3 (~~33 V.S.A. § 510(e)~~) (33 V.S.A. § 5103(c)) and 7 (33 V.S.A.

19 § 5206) shall take effect on ~~July 1, 2022~~ July 1, 2024.

Commented [MJ1]: DCF is proposing a two-year delay rather than one.

20 * * *

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

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

3 § 5119. SEALING OF RECORDS

4 * * *

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

15 * * *

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

17 § 5235. JUVENILE RESTITUTION

18 * * *

19 (e) In the event the juvenile is unable to pay the restitution judgment order
20 at the time of disposition, the court shall fix the amount thereof, ~~which shall~~
21 ~~not exceed an amount the juvenile can or will be able to pay, and shall fix the~~

1 ~~manner of performance or refer to a restorative justice program that will~~
2 ~~address how loss resulting from the delinquency will be addressed, and~~
3 establish a restitution payment schedule based upon the juvenile's current and
4 reasonably foreseeable future ability to pay, subject to modification under
5 section 5264 of this title.

6 * * *

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

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

18 (3) For purposes of this subsection, a restitution order issued in a
19 juvenile proceeding shall not be confidential. The sealing of a juvenile record
20 shall not affect the authority of the Restitution Unit to enforce a restitution

1 order in the same manner as a civil judgment under subdivision (1) of this
2 subsection (k).

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

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

5 § 5304. VICTIMS ASSISTANCE PROGRAM

6 * * *

7 (2) Notification. ~~Victims, other than victims of acts of delinquency,~~
8 shall be notified in a timely manner when a court proceeding involving their
9 case is scheduled to take place and when a court proceeding to which they
10 have been summoned will not take place as scheduled. Victims shall also be
11 notified as to the final disposition of the case, and shall be notified of their
12 right to request notification of a person's release or escape under section 5305
13 of this title.

14 * * *

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

16 § 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

17 (a) ~~Victims, other than victims of acts of delinquency,~~ and affected persons
18 shall have the right to request notification by the agency having custody of the
19 defendant before the defendant is released, including a release on bail or
20 conditions of release, furlough, or other community program; upon
21 termination or discharge from probation; or whenever the defendant escapes,

1 is recaptured, dies, or receives a pardon or commutation of sentence. Notice
2 shall be given to the victim or affected person as expeditiously as possible at
3 the address or telephone number provided to the agency having custody of the
4 defendant by the person requesting notice. Any address or telephone number
5 so provided shall be kept confidential. The prosecutor's office shall ensure
6 that victims are made aware of their right to notification of an offender's
7 scheduled release date pursuant to this section.

8 * * *

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

10 § 5110. CONDUCT OF HEARINGS

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

13 (b) The general public shall be excluded from hearings under the juvenile
14 judicial proceedings chapters, and **only the parties, their counsel, witnesses,**
15 **persons accompanying a party for his or her the party's assistance, and such**
16 **other persons as the court finds to have a proper interest in the case** or in the
17 work of the court, including a foster parent or a representative of a residential
18 program where the child resides, may be admitted by the court. An individual
19 without party status seeking inclusion in the hearing in accordance with this
20 subsection may petition the court for admittance by filing a request with the
21 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.

9 (d)(1) This section shall not prohibit a victim's exercise of rights provided
10 by sections 5233 and 5234 of this title, and as otherwise provided by law.

11 (2) Notwithstanding this section or any other provision of law, a victim
12 in a juvenile proceeding may discuss the victim's own lived experience as a
13 victim with family or household members and health care providers, provided
14 that the victim does not discuss the court proceedings or disclose any other
15 matters that are confidential by law.

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

17 § 5126. INFORMATION FROM LAW ENFORCEMENT AGENCY

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

1 (1) an explanation of the victim’s rights under this chapter and chapters
2 52 and 52A of this title;

3 (2) information concerning the availability of:

4 (A) assistance to victims, including medical, housing, counseling,
5 and emergency services;

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

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

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

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

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

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

19 (3) the file number of the case and the name, office street address, and
20 telephone number of the law enforcement officer currently assigned to
21 investigate the case;

1 (4) the prosecutor’s name, office street address, and telephone number;

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

4 (6) information concerning any conditions of release imposed on the
5 offender prior to an initial court appearance.

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

7 § 5127. VICTIM’S RIGHT TO PRESENCE OF VICTIM’S ADVOCATE

8 When a victim in a juvenile or youthful offender proceeding is ordered by
9 the court to attend or has a right to attend the proceeding, the victim may be
10 accompanied at the proceeding by a victim’s advocate.

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

12 § 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
13 INVOLVING A LISTED CRIME

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

16 (1) To be notified by the prosecutor’s office in a timely manner of the
17 following:

18 (A) when a delinquency petition has been filed, the name of the child
19 and any conditions of release initially ordered for the child or modified by the
20 court that are;

1 (i) related to the victim or a member of the victim’s family or
2 current household; or

3 (ii) deemed necessary for disclosure to the victim in the discretion
4 of the court;

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 or deemed necessary for disclosure to the victim in the discretion of the court,
17 and any restitution, when ordered.

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

20 (3) To be present during all court proceedings subject to the provisions
21 of Rule 615 of the Vermont Rules of Evidence and to express reasonably the

1 victim's views concerning the offense and the youth, to attend the disposition
2 hearing and to present a victim impact statement, 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. The
5 court shall consider the victim's statement when ordering disposition. ~~The~~
6 ~~victim shall not be personally present at any portion of the disposition hearing~~
7 ~~except to present a victim impact statement or to testify in support of his or her~~
8 ~~claim for restitution unless the court finds that the victim's presence is~~
9 ~~necessary in the interest of justice.~~

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

19 (5) To have the court take ~~his or her~~ the victim's views into
20 consideration in the court's disposition order. If the victim is not present, the
21 court shall consider whether the victim has expressed, either orally or in

1 writing, views regarding disposition and shall take those views into account
2 when ordering disposition.

3 (6) [Repealed.]

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

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

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

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

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

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

17 (B) when a delinquency petition is filed;

18 (C) the child's name and the conditions of release ordered for the
19 child or modified by the court if the conditions relate to the victim or a member
20 of the victim's family or current household or are deemed necessary for
21 disclosure to the victim in the discretion of the court; and

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

4 (2) That delinquency has been found and disposition has occurred, ~~and~~
5 any conditions of release or conditions of probation that are related to the
6 victim or a member of the victim's family or current household or are deemed
7 necessary for disclosure to the victim in the discretion of the court, and any
8 restitution ordered.

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

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

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

20 (6) 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. The court shall order that the victim be notified as
4 to the identity of the child upon disposition if the court finds that release of the
5 child's identity to the victim is in the best interests of both the child and the
6 victim and serves the interests of justice.

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

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

10 § 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER

11 PROCEEDINGS

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

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

15 (A) when a court proceeding is scheduled to take place and when a
16 court proceeding to which he or she has been notified will not take place as
17 scheduled; and

18 (B) of any conditions of release or conditions of probation that are
19 related to the victim or a member of the victim's family or current household
20 or are deemed necessary for disclosure to the victim in the discretion of the
21 court, and of any restitution ordered;

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;

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

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

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

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

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

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

1 (e) Notwithstanding any other provision of law, a victim in a youthful
2 offender proceeding may discuss the victim’s own lived experience as a victim
3 with family or household members and health care providers provided that the
4 victim does not discuss the court proceedings or disclose any other matters that
5 are confidential by law.

6 * * * Public Safety Requirement in Youthful Offender Cases * * *

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

8 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION

9 ORDER

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

18 (2) When determining whether public safety will be protected by treating
19 the youth as a youthful offender, the court shall consider:

20 (A) the nature of the charge and whether violence or a firearm was
21 involved;

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1 (B) the youth’s mental health treatment history and needs;

2 (C) the youth’s substance abuse history and needs;

3 (D) the youth’s residential housing status;

4 (E) the youth’s employment situation;

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

6 (G) whether the youth has engaged in subsequent violent acts since

7 the original charge;

8 (H) the youth’s ties to family, kin, or other responsible adults in

9 the community;

10 (I) the youth’s recent history or actual violence or threats of

11 violence; and

12 (J) whether the juvenile justice system provides the youth with a

13 sufficiently meaningful accountability mechanism.

14 * * *

15 * * * Initial Appearance in Criminal Division * * *

16 Sec. 14. 33 V.S.A. § 5201 is amended to read:

17 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

18 * * *

19 (h) Notwithstanding this section or any other provision of law, the initial
20 court appearance of a child who is alleged to have committed a felony may be
21 held in the Criminal Division of the Superior Court, provided that jurisdiction

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1 shall thereafter be determined in accordance with this chapter and chapter 52A
2 of this title, if:

3 (1) the child is arrested without a warrant; and

4 (2) the Family Division is unable to preside over the initial appearance
5 in a timely manner.

6 * * * Psychosexual Evaluation * * *

7 Sec. 15. 33 V.S.A. § 5230 is amended to read:

8 § 5230. DISPOSITION CASE PLAN

9 * * *

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

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

14 (2) lewd and lascivious conduct with a child in violation of 13 V.S.A.
15 § 2602;

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

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

18 (5) aggravated sexual assault of a child in violation of 13 V.S.A. §
19 3253a;

20 (6) kidnapping with intent to commit sexual assault in violation of
21 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 * * * Report on Secure Placements * * *

4 Sec. 16. REPORT

5 (a) On or before December 1, 2022, and for the two years following, the
6 Department for Children and Families shall report to the Senate and House
7 Committees on Judiciary on the continued implementation of Act 201
8 including information regarding the availability of secure placements and
9 transitional housing for 18- and 19- year olds subject to juvenile and youthful
10 offender proceedings. Working in conjunction with the Department of
11 Corrections, the report shall include both current and future options for
12 secure placements, a plan to ensure that the placements are available for youth
13 going forward, a description of the appropriate services to be provided, and a
14 recommendation as to whether dual custody with the Department of
15 Corrections should be considered.

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

20 Sec. 17. EFFECTIVE DATE

21 This act shall take effect on passage.

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Commented [MJ2]: The goal here is to incorporate the information requested by the Committee into the annual Act 201 report, and to extend the reporting requirements through the first full year of full implementation of the Act.

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Sec 18. 33 V.S.A. §5281 is amended to read:

§5281. Motion in Criminal Division of Superior Court

(a) A motion may be filed in the Criminal Division of the Superior Court

requesting that a defendant under 22 years of age in a criminal proceeding who had attained 12 years of age but not 22 years of age at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the State’s Attorney, the defendant, or the court on its own motion.

(b) Unless the State’s Attorney refers the youth directly to court diversion

pursuant to subsection 5280 of this title, upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the Family Division shall hold a hearing pursuant to section 5283 of this title. Pursuant to section 5110 of this title, the hearing shall be confidential. Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections supervision or custody shall remain in effect until:

* * *

(c) In making its determination whether a defendant is appropriate for youthful offender treatment, the court must consider whether there have

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1 **been prior denials of youthful offender treatment, whether a defendant**
2 **was on youthful offender treatment at the time a second or subsequent**
3 **youthful offender request was made, and whether the defendant has had**
4 **prior denials of youthful offender treatment, and may deny youthful**
5 **offender treatment in the new case based on the public safety factors listed**
6 **in §5284(a)(2) prior to the offering or completion of a report under**
7 **§5282(d). If the Family Division rejects the case for youthful offender**
8 **treatment pursuant to subsection 5284 of this title, the case shall be transferred**
9 **to the Criminal Division. 2The conditions of release imposed by the Criminal**
10 **Division shall remain in effect and the case shall proceed as though the motion**
11 **for youthful offender treatment or youthful offender petition had not been**
12 **filed.**
13
14
15 Sec. 19. 33 V.S.A. §5280 is amended to read:
16 §5280. Commencement of youthful offender proceedings in the Family
17 Division
18 * * *
19 ~~(d) Within 15 days after the commencement of a youthful offender proceeding~~
20 ~~pursuant to subsection (a) of this section, the youth shall be offered a risk and~~
21 ~~needs screening, which shall be conducted by the Department or by a~~

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1 ~~community provider that has contracted with the Department to provide the~~
2 ~~risk and needs screenings. Within 15 days after commencement of a~~
3 ~~youthful offender proceeding pursuant to subsection (a) of this section, the~~
4 ~~court shall notify the youth of the need for completion of a risk and needs~~
5 ~~screening. The notice shall inform the youth of the possible denial of~~
6 ~~youthful offender treatment if the youth fails to perform the risk and~~
7 ~~needs screening. The risk and needs screening, which shall be conducted~~
8 ~~by the Department or by a community provider that has contracted with~~
9 ~~the Department to provide risk and needs screenings.~~

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10
11 ~~Sec. 20, 33 V.S.A. §5204(a) is amended to read:~~

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12 ~~§5204. Transfer from Family Division of the Superior Court~~

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13 ~~* * *~~

14 ~~(13) first degree aggravated domestic assault, as defined in 13 V.S.A.~~
15 ~~§1043; and~~

16 ~~(14) Recklessly endangering another person, as defined in 13 V.S.A.~~
17 ~~§1025.~~

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