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H.312

Introduced by Representatives Goslant of Northfield, Burditt of West Rutland,
and Oliver of Sheldon

Referred to Committee on

Date:

Subject: Criminal procedures; juvenile proceedings; competency; regulated
drugs

Statement of purpose of bill as introduced: This bill proposes a range of
measures to address criminal violence.

An act relating to criminal violence prevention and reduction

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

* * * Bail * * *

Sec. 1. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A ~~CRIME~~ FELONY

(a) Except as otherwise provided in 18 V.S.A. § 4253, a person who carries
a dangerous or deadly weapon, openly or concealed, while committing a felony
shall be imprisoned not more than five years or fined not more than \$500.00,
or both.

1 (b) Conduct constituting the offense of carrying a dangerous or deadly
2 weapon while committing a felony shall be considered a violent act for the
3 purposes of determining bail.

4 Sec. 2. 18 V.S.A. § 4253 is amended to read:

5 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A

6 DRUG

7 (a) A person who uses a firearm during and in relation to selling or
8 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),
9 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of
10 this title shall be imprisoned not more than three years or fined not more than
11 \$5,000.00, or both, in addition to the penalty for the underlying crime.

12 * * *

13 (c) For purposes of this section, “use of a firearm” ~~shall include~~ includes:

14 (1) carrying or possessing a firearm; and

15 (2) the exchange of firearms for drugs, and this section shall apply to the
16 person who trades a firearm for a drug and the person who trades a drug for a
17 firearm.

18 (d) Conduct constituting the offense of using a firearm while selling,
19 dispensing, or trafficking a regulated drug shall be considered a violent act for
20 the purposes of determining bail.

1 * * * Competency to Stand Trial and Insanity at the Time of the Offense * * *

2 Sec. 3. 13 V.S.A. § 4801 is amended to read:

3 § 4801. TEST OF INSANITY IN CRIMINAL CASES

4 (a) The test when used as a defense in criminal cases shall be as follows:

5 (1) A person is not responsible for criminal conduct if at the time of
6 such conduct as a result of mental disease or defect ~~he or she~~ the person lacks
7 adequate capacity either to appreciate the criminality of ~~his or her~~ the person's
8 conduct or to conform ~~his or her~~ the person's conduct to the requirements of
9 law.

10 (2) The terms “mental disease or defect” do not include an abnormality
11 manifested only by repeated criminal or otherwise anti-social conduct. The
12 terms “mental disease or defect” shall include congenital and traumatic mental
13 conditions as well as disease.

14 (b) The defendant shall have the burden of proof in establishing insanity as
15 an affirmative defense by a preponderance of the evidence and shall be
16 responsible for hiring the defendant's own forensic evaluator for the purpose of
17 establishing insanity.

18 Sec. 4. 13 V.S.A. § 4814 is amended to read:

19 § 4814. ORDER FOR EXAMINATION

20 (a) Any court before which a criminal prosecution is pending may order the
21 Department of Mental Health to have the defendant examined by a psychiatrist

1 at any time before, during, or after trial, and before final judgment in any of the
2 following cases:

3 (1) ~~when the defendant enters a plea of not guilty, or when such a plea is~~
4 ~~entered in the defendant's behalf, and then gives notice of the defendant's~~
5 ~~intention to rely upon the defense of insanity at the time of the alleged crime,~~
6 ~~or to introduce expert testimony relating to a mental disease, defect, or other~~
7 ~~condition bearing upon the issue of whether he or she had the mental state~~
8 ~~required for the offense charged; [Repealed.]~~

9 (2) when the defendant, the State, or an attorney, guardian, or other
10 person acting on behalf of the defendant; raises before such court the issue of
11 whether the defendant is mentally competent to stand trial for the alleged
12 offense; or

13 (3) ~~when the court believes that there is doubt as to the defendant's~~
14 ~~sanity at the time of the alleged offense; or [Repealed.]~~

15 (4) when the court believes that there is doubt as to the defendant's
16 mental competency to be tried for the alleged offense.

17 (b) ~~Such~~ The order may be issued by the court on its own motion; or on
18 motion of the State, the defendant, or an attorney, guardian, or other person
19 acting on behalf of the defendant. The moving party shall be responsible for
20 the cost of the examination.

1 (c) An order issued pursuant to this section shall order the release of all
2 relevant records to the examiner, including all juvenile and adult court, mental
3 health, and other health records.

4 Sec. 5. 13 V.S.A. § 4815 is amended to read:

5 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

6 * * *

7 (c) A motion for examination shall be made as soon as practicable after a
8 party or the court has good faith reason to believe that there are grounds for an
9 examination. A motion for an examination shall detail the facts indicating
10 incompetency on which the motion is based and shall certify that the motion is
11 made after the moving party has met with and personally observed the
12 defendant. An attorney making such a motion shall be subject to the potential
13 sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

14 (d) Upon the making of a motion for examination, if the court finds
15 sufficient facts to order an examination, the court shall order a mental health
16 screening to be completed by a designated mental health professional while the
17 defendant is still at the court.

18 (e) If the screening cannot be commenced and completed at the courthouse
19 within two hours from the time of the defendant's appearance before the court,
20 the court may forgo consideration of the screener's recommendations.

1 (f) The court and parties shall review the recommendation of the designated
2 mental health professional and consider the facts and circumstances
3 surrounding the charge and observations of the defendant in court. If the court
4 finds sufficient facts to order an examination, it may be ordered to be
5 completed in the least restrictive environment deemed sufficient to complete
6 the examination, consistent with subsection (a) of this section.

7 * * *

8 (h) ~~Except upon good cause shown, defendants~~ Defendants charged with
9 misdemeanor offenses who are not in the custody of the Commissioner of
10 Corrections shall be examined on an outpatient basis for mental competency
11 unless the court makes written findings on the record that there is good cause
12 for an inpatient evaluation. Examinations occurring in the community shall be
13 conducted at a location within 60 miles of the defendant's residence or at
14 another location agreed to by the defendant.

15 * * *

16 Sec. 6. 13 V.S.A. § 4816 is amended to read:

17 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

18 (a) Examinations provided for in section 4815 of this title shall have
19 reference to ~~one or both of the following~~:

20 (1) mental competency of the person examined to stand trial for the
21 alleged offense.

1 ~~(2) sanity of the person examined at the time of the alleged offense.~~

2 (b) A competency evaluation for an individual thought to have a
3 developmental disability shall include a current evaluation by a psychologist
4 skilled in assessing individuals with developmental disabilities.

5 ~~(c)(1)~~ As soon as practicable after the examination has been completed, the
6 examining psychiatrist or, if applicable under subsection (b) of this section, ~~the~~
7 ~~psychiatrist and~~ the psychologist shall prepare a report containing findings in
8 regard to the applicable provisions of subsection (a) of this section. The report
9 shall be transmitted to the court issuing the order for examination; and copies
10 of the report sent to the State's Attorney, to the respondent, to the respondent's
11 attorney if the respondent is represented by counsel, to the Commissioner of
12 Mental Health, and, if applicable, to the Department of Disabilities, Aging, and
13 Independent Living.

14 ~~(2) If the court orders examination of both the person's competency to~~
15 ~~stand trial and the person's sanity at the time of the alleged offense, those~~
16 ~~opinions shall be presented in separate reports and addressed separately by the~~
17 ~~court. In such cases, the examination of the person's sanity shall only be~~
18 ~~undertaken if the psychiatrist or, if applicable under subsection (b) of this~~
19 ~~section, the psychiatrist and the psychologist are able to form the opinion that~~
20 ~~the person is competent to stand trial, unless the defendant requests that the~~
21 ~~examinations occur concurrently. If the evaluation of the defendant's sanity at~~

1 ~~the time of the alleged offense does not occur until the defendant is deemed~~
2 ~~competent to stand trial, the psychiatrist or, if applicable under subsection (b)~~
3 ~~of this section, the psychiatrist and the psychologist shall make a reasonable~~
4 ~~effort to collect and preserve any evidence necessary to form an opinion as to~~
5 ~~sanity if the person regains competence.~~

6 (d) No statement made in the course of the examination by the person
7 examined, whether or not ~~he or she~~ the person has consented to the
8 examination, shall be admitted as evidence in any criminal proceeding for the
9 purpose of proving the commission of a criminal offense or for the purpose of
10 impeaching testimony of the person examined.

11 (e) The relevant portion of a psychiatrist's report shall be admitted into
12 evidence as an exhibit on the issue of the person's mental competency to stand
13 trial and the opinion shall be conclusive on the issue if agreed to by the parties
14 and if found by the court to be relevant and probative on the issue.

15 (f) Introduction of a report under subsection (d) of this section shall not
16 preclude either party or the court from calling the psychiatrist who wrote the
17 report as a witness or from calling witnesses or introducing other relevant
18 evidence. Any witness called by either party on the issue of the defendant's
19 competency shall be at the State's expense, or, if called by the court, at the
20 court's expense.

1 Sec. 7. 13 V.S.A. § 4817 is amended to read:

2 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

3 (a) A defendant shall be presumed to be competent.

4 (b) A person shall not be tried for a criminal offense if ~~he or she~~ the person
5 is incompetent to stand trial.

6 ~~(b)~~(c) If a person indicted, complained, or informed against for an alleged
7 criminal offense, an attorney or guardian acting in ~~his or her~~ the person's
8 behalf, or the State, at any time before final judgment, raises before the court
9 before which such person is tried or is to be tried, the issue of whether such
10 person is incompetent to stand trial, or if the court has reason to believe that
11 such person may not be competent to stand trial, a hearing shall be held before
12 such court at which evidence shall be received and a finding made regarding
13 ~~his or her~~ the person's competency to stand trial. However, in cases where the
14 court has reason to believe that such person may be incompetent to stand trial
15 due to a mental disease or mental defect, such hearing shall not be held until an
16 examination has been made and a report submitted by an examining
17 psychiatrist in accordance with sections 4814–4816 of this title.

18 ~~(c)~~(d) A person who has been found incompetent to stand trial for an
19 alleged offense may be tried for that offense if, upon subsequent hearing, such
20 person is found by the court having jurisdiction of ~~his or her~~ the person's trial
21 for the offense to have become competent to stand trial.

1 Sec. 8. 13 V.S.A. § 4820 is amended to read:

2 § 4820. HEARING REGARDING COMMITMENT

3 (a) When a person charged on information, complaint, or indictment with a
4 criminal offense:

5 (1) ~~Is reported by the examining psychiatrist following examination~~
6 ~~pursuant to sections 4814-4816 of this title to have been insane at the time of~~
7 ~~the alleged offense. [Repealed.]~~

8 (2) ~~Is~~ is found upon hearing pursuant to section 4817 of this title to be
9 incompetent to stand trial due to a mental disease or mental defect;

10 (3) ~~Is~~ is not indicted upon hearing by grand jury by reason of insanity at
11 the time of the alleged offense, duly certified to the court; or

12 (4) ~~Upon~~ upon trial by court or jury is acquitted by reason of insanity at
13 the time of the alleged offense; the court before which such person is tried or is
14 to be tried for such offense, shall hold a hearing for the purpose of determining
15 whether such person should be committed to the custody of the Commissioner
16 of Mental Health. Such person may be confined in jail or some other suitable
17 place by order of the court pending hearing for a period not exceeding ~~15~~ 21
18 days.

19 (b) When a person is found to be incompetent to stand trial, has not been
20 indicted by reason of insanity for the alleged offense, or has been acquitted by
21 reason of insanity at the time of the alleged offense, the person shall be entitled

1 to have counsel appointed from Vermont Legal Aid to represent the person.

2 The Department of Mental Health and, if applicable, the Department of
3 Disabilities, Aging, and Independent Living shall be entitled to appear and call
4 witnesses at the proceeding.

5 (c) A commitment order issued pursuant to this chapter shall not modify or
6 vacate orders concerning conditions of release or bail issued pursuant to
7 chapter 229 of this title, and the commitment order shall remain in place unless
8 expressly modified, provided that inpatient treatment shall be permitted if a
9 person who is held without bail is found to be in need of inpatient treatment
10 under this chapter.

11 Sec. 9. COMPETENCY RESTORATION PROGRAM PLAN

12 On or before November 15, 2023, the Department of Mental Health and the
13 Department of Aging and Independent Living shall report a plan for a
14 competency restoration program to the Governor, the Senate Committees on
15 Judiciary and on Health and Welfare, and the House Committees on Judiciary,
16 on Health Care, and on Human Services. The report shall include
17 recommendations for best practices, any changes to law necessary to establish
18 the program, estimated costs, and a proposal for implementing the program.

19 * * * Regulated Drugs * * *

20 Sec. 10. 18 V.S.A. § 4201 is amended to read:

21 § 4201. DEFINITIONS

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(45) “Fentanyl” means fentanyl or any compound, mixture, or preparation including salts, isomers, or salts of isomers containing fentanyl or fentanyl-related substances as defined by rule in accordance with this chapter.

(46) “Knowingly” means actual knowledge that one or more preparations, compounds, mixtures, or substances contains the regulated drug identified in the applicable section of this chapter, or consciously ignoring a substantial risk that one or more preparations, compounds, mixtures, or substances contains the regulated drug identified in the applicable section of this chapter.

Sec. 11. 18 V.S.A. § 4238 is amended:

§ 4238. SECOND AND SUBSEQUENT OFFENSES

(a) Penalty. ~~A~~ Except as provided in subsection (b) of this section, a person convicted of a second or subsequent offense of violating section 4228, 4230, 4231, 4232, 4233, 4234, 4235, 4236 or 4237 of this title, except a violation of subdivision 4230(a)(1), or a comparable offense in another jurisdiction of the United States, shall be subject to a term of imprisonment or fined up to twice that authorized by those sections, or both.

(b) Trafficking.

(1) A person convicted of a second or subsequent offense for trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c),

1 4233a(b), or 4234a(c) of this title, or a comparable offense in another
2 jurisdiction of the United States, shall be imprisoned not less than three years
3 and not more than 30 years or fined not more than \$2,000,000.00, or both.

4 (2) Except as provided in subdivision (3) of this subsection, the three-
5 year minimum term of imprisonment required by this section shall be served
6 and may not be suspended, deferred, or served as a supervised sentence. The
7 defendant shall not be eligible for probation, parole, furlough, or any other type
8 of early release until the expiration of the three-year term of imprisonment.

9 (3) Notwithstanding subdivision (2) of this subsection, the court may
10 impose a sentence that does not include a term of imprisonment or that
11 includes a term of imprisonment of less than three years if the court makes
12 written findings on the record that such a sentence will serve the interests of
13 justice.

14 Sec. 12. 18 V.S.A. § 4250 is amended to read:

15 § 4250. SELLING OR DISPENSING A REGULATED DRUG WITH
16 DEATH RESULTING

17 (a) If the death of a person results from the selling or dispensing of a
18 regulated drug to the person in violation of this chapter, the person convicted
19 of the violation shall be imprisoned not less than two years nor more than
20 20 years.

1 (b) This section shall apply only if the person's use of the regulated drug is
2 the proximate cause of ~~his or her~~ the person's death. The fact that a dispensed
3 or sold substance contains more than one regulated drug shall not be a defense
4 under this section if the proximate cause of death is the use of the dispensed or
5 sold substance containing more than one regulated drug. There shall be a
6 permissive inference that the proximate cause of death is the person's use of
7 the regulated drug if the regulated drug contains fentanyl.

8 (c)(1) Except as provided in subdivision (2) of this subsection, the two-year
9 minimum term of imprisonment required by this section shall be served and
10 may not be suspended, deferred, or served as a supervised sentence. The
11 defendant shall not be eligible for probation, parole, furlough, or any other type
12 of early release until the expiration of the two-year term of imprisonment.

13 (2) Notwithstanding subdivision (1) of this subsection, the court may
14 impose a sentence that does not include a term of imprisonment or that
15 includes a term of imprisonment of less than two years if the court makes
16 written findings on the record that the sentence will serve the interests of
17 justice.

18 * * * Juvenile and Youthful Offender Proceedings * * *

19 Sec. 13. 33 V.S.A. § 5204 is amended to read:

20 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
21 COURT

1 (a) After a petition has been filed alleging delinquency, upon motion of the
2 State's Attorney and after hearing, the Family Division of the Superior Court
3 may transfer jurisdiction of the proceeding to the Criminal Division of the
4 Superior Court if the child had attained 16 years of age but not 19 years of age
5 at the time the act was alleged to have occurred and the delinquent act set forth
6 in the petition is a felony not specified in subdivisions ~~(1)–(12)~~ (1)–(29) of this
7 subsection or if the child had attained 12 years of age but not 14 years of age at
8 the time the act was alleged to have occurred, and if the delinquent act set forth
9 in the petition was any of the following crimes of violence against a person:

10 (1) arson causing death as defined in 13 V.S.A. § 501, first degree arson
11 as defined in 13 V.S.A. § 502, or second degree arson as defined in 13 V.S.A.
12 § 503;

13 (2) assault and robbery with a dangerous weapon as defined in
14 13 V.S.A. § 608(b);

15 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
16 § 608(c);

17 (4) aggravated assault as defined in 13 V.S.A. § 1024;

18 (5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as
19 defined in 13 V.S.A. § 2911;

20 (6) manslaughter as defined in 13 V.S.A. § 2304;

21 (7) kidnapping as defined in 13 V.S.A. § 2405;

- 1 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- 2 (9) maiming as defined in 13 V.S.A. § 2701;
- 3 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- 4 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and
- 5 aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a; or
- 6 (12) burglary into an occupied dwelling as defined in 13 V.S.A.
- 7 § 1201(c);
- 8 (13) stalking as defined in 13 V.S.A. § 1062 and aggravated stalking as
- 9 defined in 13 V.S.A. § 1063(a)(3);
- 10 (14) domestic assault as defined in 13 V.S.A. § 1042, first degree
- 11 aggravated domestic assault a defined in 13 V.S.A. § 1043, and second degree
- 12 aggravated domestic assault a defined in 13 V.S.A. § 1044;
- 13 (15) trafficking a regulated drug as defined in 18 V.S.A. §§ 4230(c),
- 14 4231(c), 4233(c), or 4234a(c);
- 15 (16) selling or dispensing a regulated drug with death resulting as
- 16 defined in 18 V.S.A. § 4250;
- 17 (17) using a firearm while selling or dispensing a drug as defined in 18
- 18 V.S.A. § 4253;
- 19 (18) carrying a dangerous or deadly weapon while committing a felony
- 20 as defined in 13 V.S.A. § 4005;

1 (19) lewd or lascivious conduct as defined in 13 V.S.A. § 2601 or lewd
2 or lascivious conduct with a child as defined in 13 V.S.A. § 2602;

3 (20) eluding a police officer with serious bodily injury or death resulting
4 as defined in 23 V.S.A. § 1133(b);

5 (21) willful and malicious injuries caused by explosives as defined in
6 13 V.S.A. § 1601, injuries caused by destructive devices as defined in
7 13 V.S.A. § 1605 or injuries caused by explosives as defined in 13 V.S.A.
8 § 1608;

9 (22) human trafficking in violation of 13 V.S.A. § 2652 or aggravated
10 human trafficking in violation of 13 V.S.A. § 2653;

11 (23) grand larceny as defined in 13 V.S.A. § 2501 or larceny from the
12 person as defined in 13 V.S.A. § 2503;

13 (24) operating vehicle under the influence of alcohol or other substance
14 with either death or serious bodily injury resulting as defined in 23 V.S.A.
15 § 1210(f) and (g);

16 (25) careless or negligent operation resulting in serious bodily injury or
17 death as defined in 23 V.S.A. § 1091(b);

18 (26) leaving the scene of an accident with serious bodily injury or death
19 as defined in 23 V.S.A. § 1128(b) or (c);

20 (27) a hate-motivated crime as defined in 13 V.S.A. § 1455;

21 (28) conspiracy as defined in 13 V.S.A. § 1404;

1 (29) an attempt to commit any of the preceding offenses as defined in
2 13 V.S.A. § 9;

3 (30) a violation of an abuse prevention order as defined in 13 V.S.A.
4 § 1030 or violation of an order against stalking or sexual assault as defined in
5 12 V.S.A. § 5138; or

6 (31) a violation of a condition of release as defined 13 V.S.A. § 7559 for
7 any of the offenses specified in subdivisions (1)–(29) of this subsection.

8 * * *

9 Sec. 14. 33 V.S.A. § 5280 is amended to read:

10 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

11 ~~PROCEEDINGS IN THE FAMILY DIVISION~~

12 (a) A youthful offender proceeding under this chapter shall be commenced
13 by:

14 (1) the filing of a youthful offender petition by a State’s Attorney in the
15 Criminal Division of the Superior Court; or

16 (2) ~~transfer to the Family Court of a proceeding from the Criminal~~
17 ~~Division of the Superior Court as provided in section 5281 of this title~~ the
18 filing of a motion in the Criminal Division of the Superior Court requesting
19 that a defendant under 22 years of age in a criminal proceeding who had
20 attained 14 years of age but not 22 years of age at the time of the offense is
21 alleged to have been committed be treated as a youthful offender. The motion

1 may be filed by the State’s Attorney, the defendant or the court on its own
2 motion.

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 14 years of age but not 22 years of age that could
6 otherwise be filed in the Criminal Division. Except as provided in subdivision
7 5283(c)(2) of this title, upon the commencement of a youthful offender
8 proceeding, future proceedings shall be sealed until youthful offender status is
9 denied or revoked.

10 (c)(1) Upon the filing of a motion under this a section and the entering of a
11 conditional plea of guilty by the youth, the Criminal Division shall enter an
12 order deferring the sentence and hold a hearing on the motion. If the youth
13 declines to enter a conditional plea, youthful offender status shall be denied.

14 (2) As used in this subsection, “conditional plea of guilty” means a plea
15 of guilty that is conditioned on the granting of youthful offender status that
16 may be withdrawn in the event that youthful offender status is denied.

17 ~~(e)(d)~~ If a State’s Attorney files a petition under subdivision (a)(1) of this
18 section, the The case shall proceed as provided under subsection 5281(b) of
19 this title.

20 ~~(d)(e)(1)~~ ~~Within 15 days after~~ Upon the commencement of a youthful
21 offender proceeding pursuant to ~~subsection (a)~~ of this section, the court shall

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

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

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

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

1 ~~(e)~~(f) The State’s Attorney shall refer directly to court diversion a youth
2 alleged to have committed any offense other than ~~those~~ crimes of violence
3 against a person specified in subsection 5204(a) of this title who presents a low
4 to moderate risk to reoffend based on the results of the risk and needs
5 screening, unless the State’s Attorney states on the record at the hearing held
6 pursuant to section 5283 of this title why a referral would not serve the ends of
7 justice. If the court diversion program does not accept the case or if the youth
8 fails to complete the program in a manner deemed satisfactory and timely by
9 the provider, the youth’s case shall return to the State’s Attorney for charging
10 consideration.

11 Sec. 15. 33 V.S.A. § 5281 is amended to read:

12 § 5281. ~~MOTION~~ COMMENCEMENT OF YOUTHFUL OFFENDER
13 PROCEEDINGS IN CRIMINAL DIVISION OF SUPERIOR
14 COURT

15 (a) ~~A motion may be filed in the Criminal Division of the Superior Court~~
16 ~~requesting that a defendant under 22 years of age in a criminal proceeding who~~
17 ~~had attained 12 years of age but not 22 years of age at the time the offense is~~
18 ~~alleged to have been committed be treated as a youthful offender. The motion~~
19 ~~may be filed by the State’s Attorney, the defendant, or the court on its own~~
20 ~~motion.~~

1 ~~(b)~~ Unless the State's Attorney refers the youth directly to court diversion
2 pursuant to subsection 5280(e) of this title, upon the filing of a motion ~~under~~
3 ~~this section~~ or the filing of a youthful offender petition pursuant to section
4 5280 of this title, the ~~Family Division~~ court shall hold a hearing pursuant to
5 section 5283 of this title. ~~Pursuant to section 5110 of this title, the~~ The hearing
6 shall be confidential as provided in section 5284 of this title. ~~Copies of all~~
7 ~~records relating to the case shall be forwarded to the Family Division.~~
8 Conditions of release and any Department of Corrections supervision or
9 custody shall remain in effect until:

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

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

15 (3) the case is otherwise concluded.

16 ~~(e)(b)(1)~~ If the ~~Family Division~~ court rejects the case for youthful offender
17 treatment pursuant to section 5284 of this title, ~~the case shall be transferred to~~
18 ~~the Criminal Division. The conditions of release imposed by the Criminal~~
19 ~~Division shall remain in effect, any previously sealed proceedings shall be~~
20 unsealed and the case shall proceed as though the motion for youthful offender
21 treatment or youthful offender petition had not been filed.

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

6 ~~(d)~~(c) If the ~~Family Division~~ court accepts the case for youthful offender
7 treatment, ~~the case shall proceed to a confidential merits hearing or admission~~
8 ~~pursuant to sections 5227-5229 of this title~~ the youth shall not be permitted to
9 withdraw the youth's plea of guilty after youthful offender status is approved
10 except to correct manifest injustice pursuant to Rule 32(d) of the Vermont
11 Rules of Criminal Procedure.

12 Sec. 16. 33 V.S.A. § 5282 is amended to read:

13 § 5282. ~~REPORT FROM THE DEPARTMENT~~

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

20 ~~(b) A report filed pursuant to this section shall include the following~~
21 ~~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 18~~
13 ~~years of age, unless the court finds that disclosure would be contrary to the best~~
14 ~~interests 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. [Repealed.]~~

18 Sec. 17. 33 V.S.A. § 5383 is amended to read:

19 § 5283. DISPOSITION HEARING IN FAMILY DIVISION

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

1 ~~consideration~~ disposition hearing shall be held not later than ~~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~~ 45 days after the filing of a motion or the filing
4 of a youthful offender petition under Section 5280 of this title.

5 (b) Notice. Notice of the hearing shall be provided to the State's Attorney;
6 the youth; the youth's parent, guardian, or custodian; the victim; the
7 Department; and the Department of Corrections. The court shall not exclude
8 any victim from the proceeding or any portion of it unless, after hearing from
9 the parties and the victim, and for good cause clearly and specifically stated on
10 the record, the court orders otherwise. As used in this subsection, "victim"
11 means a person who is the victim of a crime for which a youth is charged; a
12 parent, guardian, or legal representative of the victim; or a victim's advocate.

13 (c) Hearing procedure.

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

19 (2) For individuals who had attained 18 years of age but not 22 years of
20 age at the time the act is alleged to have been committed, hearings under

1 subsection 5284(a) of this title shall be open to the public. All other youthful
2 offender proceedings shall be confidential.

3 (d) Burden of proof. The burden of proof shall be on the moving party to
4 prove by a preponderance of the evidence that a ~~child~~ youth should be granted
5 youthful offender status. If the court makes the motion, the burden shall be on
6 the youth.

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

10 Sec. 18. 33 V.S.A. § 5284 is amended to read:

11 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
12 ORDER

13 (a)(1) In a hearing on a motion or petition for youthful offender status, the
14 court shall first consider whether public safety will be protected by treating the
15 youth as a youthful offender. If the court finds that public safety will not be
16 protected by treating the youth as a youthful offender, the court shall deny the
17 motion ~~and transfer the case to the Criminal Division of the Superior Court~~
18 pursuant to subsection 5281(d) of this title, the conditions of release imposed
19 by the Criminal Division shall remain in effect, and the case shall proceed as
20 though the motion for youthful offender treatment or youthful offender petition
21 had not been filed. If the court finds that public safety will be protected by

1 treating the youth as a youthful offender, the court shall proceed to make a
2 determination under subsection (b) of this section.

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

6 (A) the nature and circumstances of the charge and whether violence
7 was involved;

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

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

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

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

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

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

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

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

19 (J) the youth's history of violence and history of illegal or violent
20 conduct involving firearms or other deadly weapons.

21 (b)(1) The court shall deny the motion if the court finds that:

1 (A) public safety will not be protected by treating the youth as a
2 youthful offender;

3 (B) the youth is not amenable to treatment or rehabilitation as a
4 youthful offender; or

5 ~~(B)~~(C) there are insufficient services in the juvenile court system and
6 the Department for Children and Families and the Department of Corrections
7 to meet the youth's treatment and rehabilitation needs.

8 (2) The court shall grant the motion if the court finds that:

9 (A) public safety will be protected by treating the youth as a
10 youthful offender;

11 (B) the youth is amenable to treatment or rehabilitation as a youthful
12 offender; and

13 ~~(B)~~(C) there are sufficient services in the juvenile court system and
14 the Department for Children and Families and the Department of Corrections
15 to meet the youth's treatment and rehabilitation needs.

16 (c) If the court approves the motion for youthful offender treatment ~~after an~~
17 ~~adjudication pursuant to subsection 5281(d) of this title~~, the court:

18 (1) shall place the youth on conditions of probation pursuant to
19 28 V.S.A. chapter 5, provided that the requirements of this subdivision may be
20 satisfied by entering the single condition of probation required under

1 subdivision (3) of this subsection or such additional conditions imposed by the
2 court;

3 (2) shall approve a disposition case plan and impose conditions of
4 juvenile probation on the youth; ~~and~~

5 (3) shall include as a condition of probation adherence to the disposition
6 plan approved by the court; and

7 ~~(2)(4)~~ may transfer legal custody of the youth to a parent, relative,
8 person with a significant relationship with the youth, or Commissioner of the
9 Department for Children and Families, provided that any transfer of custody
10 shall expire on the youth's 18th birthday.

11 (d)(1) The Department for Children and Families and the Department of
12 Corrections shall be responsible for supervision of and providing services to
13 the youth until ~~he or she reaches 22 years of age~~ the earlier of:

14 (A) the youth successfully completing treatment and supervision; or

15 (B) the youthful offender designation being revoked pursuant to

16 section 5285 of this title.

17 (2) ~~Both Departments~~ the Department for Children and Families and the
18 Department of Corrections shall designate a case manager who together shall
19 appoint a lead Department to have final decision-making authority over the
20 case plan and the provision of services to the youth. The youth shall be

1 eligible for all appropriate community-based programming and services
2 provided by ~~both Departments~~ the Agency of Human Services.

3 Sec. 19. 33 V.S.A. § 5285 is amended to read:

4 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

5 (a) If it appears that the youth has violated the terms of juvenile probation
6 ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion
7 for modification or revocation of youthful offender status may be filed in the
8 ~~Family~~ Criminal Division of the Superior Court. The court shall set the motion
9 for hearing ~~as soon as practicable~~ within 30 days. The hearing may be joined
10 with a hearing on a violation of conditions of probation under section 5265 of
11 this title. ~~A~~ Consistent with the procedures of 28 V.S.A. § 301, a supervising
12 juvenile or adult probation officer may detain in an adult facility a youthful
13 offender who has attained 18 years of age for violating conditions of probation.
14 A youthful offender who has not achieved 18 years of age may be detained in a
15 facility for juveniles pursuant to section 5266 of this title. A youthful offender
16 who is detained prior to 18 years of age who subsequently achieves 18 years of
17 age may be transferred to an adult facility.

18 (b) A hearing under this section shall be held in accordance with section
19 5268 of this title.

20 (c) If the court finds after the hearing that the youth has violated the terms
21 of ~~his or her~~ the youth's probation, the court may:

1 (1) maintain the youth's status as a youthful offender, with modified
2 conditions of juvenile probation if the court deems it appropriate;

3 (2) revoke the youth's status as a youthful offender ~~and transfer the case~~
4 ~~with a record of the petition, affidavit, adjudication, disposition, and revocation~~
5 ~~to the Criminal Division for sentencing;~~ or

6 (3) transfer supervision of the youth to the Department of Corrections
7 with all of the powers and authority of the Department and the Commissioner
8 under Title 28, including graduated sanctions and electronic monitoring.

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

19 Sec. 20. 33 V.S.A. § 5286 is amended to read:

20 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

1 (a) If a youth is on probation as a youthful offender prior to reaching 18
2 years of age, the Family Division shall review the youth's case before ~~he or she~~
3 the youth reaches 18 years of age and set a hearing to determine whether the
4 court's jurisdiction over the youth should be continued past 18 years of age.
5 The hearing may be joined with a motion to terminate youthful offender status
6 under section 5285 of this title. The court shall provide notice and an
7 opportunity to be heard at the hearing to the State's Attorney, the youth, the
8 Department for Children and Families, and the Department of Corrections.

9 * * *

10 (d) If the court finds that it is in the best interests of the youth and
11 consistent with community safety to continue the case past 18 years of age, it
12 shall make an order continuing the court's jurisdiction up to 22 years of age.
13 The Department for Children and Families and the Department of Corrections
14 shall jointly develop a case plan for the youth and coordinate services and
15 share information to ensure compliance with and completion of the ~~juvenile~~
16 youthful offender disposition.

17 * * *

18 Sec. 21. 33 V.S.A. § 5287 is amended to read:

19 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

20 (a) A motion or stipulation may be filed at any time in the ~~Family~~ Criminal
21 Division requesting that the court terminate the youth's status as a youthful

1 offender and discharge ~~him or her~~ the youth from probation. The motion may
2 be filed by the State's Attorney, the youth, the Department, or the court on its
3 own motion.

4 (b) In determining whether a youth has successfully completed the terms of
5 probation, the court shall consider:

6 (1) the degree to which the youth fulfilled the terms of the case plan and
7 the probation order;

8 (2) the youth's performance during treatment;

9 (3) reports of treatment personnel; and

10 (4) any other relevant facts associated with the youth's behavior.

11 (c) If the court finds that the youth has successfully completed the terms of
12 the probation order, it shall terminate youthful offender status, discharge the
13 youth from probation, and file a written order dismissing the ~~Family Division~~
14 case. ~~The Family Division shall provide notice of the dismissal to the Criminal~~
15 ~~Division, which shall dismiss the criminal case.~~

16 (d) Upon discharge and dismissal under subsection (c) of this section, all
17 records relating to the case in the Criminal Division shall be ~~expunged, and all~~
18 ~~records relating to the case in the Family Court shall be sealed pursuant to~~
19 ~~section 5119 of this title.~~ Records sealed pursuant to this subsection shall be
20 available to:

21 (1) the defendant and the defendant's attorney;

1 (2) any court or State’s attorneys for the purposes of a pending criminal
2 action;

3 (3) federal and state law enforcement agencies when acting within the
4 scope of their law enforcement duties;

5 (4) the court, prosecutor, and defense counsel if the defendant becomes
6 a witness in a criminal proceeding or the plaintiff and defendant in a civil
7 proceeding if the defendant becomes a witness in the proceeding;

8 (5) when an individual is a defendant in a criminal action and the sealed
9 records of the defendant are integral to the defense;

10 (6) entities that are required by state or federal law to request a
11 fingerprint-based background check of criminal history information;

12 (7) any prospective employer of the defendant if the defendant seeks
13 employment as a law enforcement officer;

14 (8) any federal, state, or local officer or agency with responsibility for
15 the issuance of licenses to possess a firearm or with the responsibility of
16 conducting background checks before transfer or sale of a firearm or explosive,
17 including the Criminal Justice Information Services Division of the Federal
18 Bureau of Investigation, for purposes of responding to queries from the
19 National Instant Background Check System related to the transfer of firearms;
20 and

1 (9) for purposes of civilian investigation or evaluation of a civilian
2 complaint or civil action concerning law enforcement or prosecution actions.

3 (e) If the court denies the motion to discharge the youth from probation, the
4 court may extend or amend the probation order as it deems necessary.

5 (f) Upon the termination of the period of probation, the youth shall be
6 discharged from probation.

7 Sec. 22. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts
8 and Resolves No. 160, Sec. 1, is amended to read:

9 Sec. 21. EFFECTIVE DATES

10 * * *

11 (d) Secs. 17–19 shall take effect on ~~July 1, 2023~~ July 1, 2025.

12 Sec. 23. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts
13 and Resolves No. 160, Sec. 2, is amended to read:

14 Sec. 12. EFFECTIVE DATES

15 (a) Secs. 3 (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect
16 on ~~July 1, 2023~~ July 1, 2025.

17 * * *

18 * * * Effective Dates * * *

19 Sec. 24. EFFECTIVE DATES

20 This act shall take effect on passage, except that Sec. 13 shall take effect on
21 July 2, 2023.