

H.590

Introduced by Representative Rachelson of Burlington

Referred to Committee on

Date:

Subject: Delinquency proceedings; placement in secure facilities

Statement of purpose of bill as introduced: This bill proposes to prohibit the detention and incarceration of minors under 18 years of age in adult correctional facilities.

An act relating to prohibiting detention and incarceration of minors under 18 years of age in adult correctional facilities

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

Sec. 1. 33 V.S.A. chapter 52, subchapter 6 is amended to read:

Subchapter 6. Placement in Secure Facilities

§ 5291. DETENTION OR TREATMENT OF INDIVIDUALS CHARGED

AS DELINQUENTS IN SECURE FACILITIES FOR THE

DETENTION OR TREATMENT OF DELINQUENT CHILDREN

(a) Prior to disposition, the court shall have the sole authority to place a child who is in the custody of the Department in a secure facility used for the detention or treatment of delinquent children until the Commissioner determines that a suitable placement is available for the child. The court shall

1 not order placement in a secure facility without a recommendation from the
2 Department that placement in a secure facility is necessary. The court order
3 shall include a finding that no other suitable placement is available and the
4 child presents a risk of injury to ~~himself or herself~~ the child, to others, or to
5 property.

6 (b) Absent good cause shown and notwithstanding section 5227 of this
7 title, when a child is placed in a secure facility pursuant to subsection (a) of
8 this section and remains in a secure facility for 45 days following the
9 preliminary hearing, the merits hearing shall be held and merits adjudicated
10 within 45 days ~~of~~ after the date of the preliminary hearing or the court shall
11 dismiss the petition with prejudice. If merits have been found, the court shall
12 review the secure facility placement order at the merits hearing.

13 (c) If a child is placed in a secure facility pursuant to subsection (a) of this
14 section and secure facility placement continues following the merits hearing
15 review pursuant to subsection (b) of this section, the court shall, within 35 days
16 ~~of~~ after the merits adjudication:

17 (1) hold the disposition hearing; or

18 (2) if disposition is not held within 35 days, hold a hearing to review the
19 continued secure facility placement.

20 (d) A child placed in a secure facility on an order pursuant to subsection
21 (a), (b), or (c) of this section with a finding that no other suitable placement is

1 available and the child presents a risk of harm to others or to property shall be
2 entitled to an independent, second evidentiary hearing, which shall be a
3 hearing de novo by a single justice of the Vermont Supreme Court. The Chief
4 Justice may make an appointment or special assignment in accordance with 4
5 V.S.A. § 22 to conduct the de novo hearing required by this subsection.
6 Unless the parties stipulate to the admission of portions of the trial court
7 record, the de novo review shall be a new evidentiary hearing without regard to
8 the record compiled before the trial court.

9 (e) Following disposition, the Commissioner shall have the sole authority
10 to place a child who is in the custody of the Department in a secure facility for
11 the detention or treatment of delinquent children pursuant to the Department's
12 administrative policies on admission.

13 § 5292. PROHIBITION ON DETENTION IN ADULT FACILITIES OF
14 MINORS CHARGED OR ADJUDICATED AS DELINQUENTS

15 (a) A minor charged with a delinquent act shall not be detained under this
16 chapter in a jail or other facility intended or used for the detention of adults
17 ~~unless the child is alleged to have committed a crime punishable by life~~
18 ~~imprisonment and it appears to the satisfaction of the court that public safety~~
19 ~~and protection reasonably require such detention.~~

20 (b) A minor who has been adjudicated as a delinquent child shall not by
21 virtue of such adjudication be committed or transferred to an institution or

1 other facility used primarily for the execution of sentences of persons
2 convicted of a crime.

3 (c) The official in charge of a jail or other facility intended or used for the
4 detention of adult offenders or persons charged with crime shall inform the
5 court immediately when a minor who is or appears to be under ~~the age of~~ 18
6 years of age is received at the facility ~~other than pursuant to subsection (a) of~~
7 ~~this section or section 5293 of this title~~ and shall deliver the minor to the court
8 upon request of the court or transfer the minor to the detention facility
9 designated by the court by order.

10 § 5293. ~~DISPOSITION~~ PROHIBITION ON DETENTION IN ADULT
11 FACILITIES OF MINORS ADJUDICATED AS ADULT
12 ~~OFFENDERS; SEPARATION OF PERSONS UNDER 18 YEARS~~
13 ~~FROM ADULTS~~

14 (a) Pretrial detention.

15 (1) A minor who is under ~~the age of~~ 18 years of age who has been
16 arrested shall not be placed in a facility for adult offenders ~~unless a felony~~
17 ~~charge has been filed in the Criminal Division of the Superior Court or the~~
18 ~~Criminal Division of the Superior Court has exercised jurisdiction over the~~
19 ~~matter and the State's Attorney has determined that a felony charge will be~~
20 ~~filed without delay.~~ A minor who is eligible for release under 13 V.S.A.
21 chapter 229 shall be released.

1 (2)(A) A minor who is under ~~the age of 18~~ 18 years of age who has been
2 arrested ~~for a misdemeanor~~ shall immediately and without first being taken
3 elsewhere:

4 (i) be released to ~~his or her~~ the minor's custodial parent, guardian,
5 or custodian; or

6 (ii) be delivered to the Criminal Division of the Superior Court.

7 (B) If the minor is delivered to the Criminal Division of the Superior
8 Court, the arresting officer shall immediately file written notice thereof with
9 the court together with a statement of the reason for taking the minor into
10 custody. A minor who is eligible for release under 13 V.S.A. chapter 229 shall
11 be released. In the event that the minor is not released:

12 (i) the minor shall not be detained in a facility for adult offenders;
13 and

14 (ii) the court shall defer to the Commissioner of Corrections
15 concerning the facility in which the minor shall be detained.

16 (b) Sentencing of minor. If a minor is convicted of an offense in a court of
17 criminal jurisdiction as an adult, the court shall sentence the minor as an adult.

18 (c) Placement of minors under ~~16~~ 18 years of age. The Commissioner of
19 Corrections shall not place a minor under ~~the age of 16~~ 18 years of age who
20 has been sentenced to a term of imprisonment in a correctional facility used to
21 house adult offenders.

1 ~~(d) Placement of minors over 16 convicted of felony. The Commissioner~~
2 ~~of Corrections may place in a facility for adult offenders a minor who has~~
3 ~~attained the age of 16 but is under the age of 18 who has been convicted of a~~
4 ~~felony and who has been sentenced to a term of imprisonment. [Repealed.]~~

5 ~~(e) Placement of minor over 16 convicted of misdemeanor. The~~
6 ~~Commissioner of Corrections shall not place in a facility for adult offenders a~~
7 ~~minor who has attained the age of 16 but is under the age of 18 who has been~~
8 ~~convicted of a misdemeanor. [Repealed.]~~

9 (f) Transfer of minor at 18th birthday. At the 18th birthday of a minor
10 convicted of a misdemeanor, the Commissioner may transfer the minor to a
11 facility for adult offenders.

12 (g) Applicability. The provisions of this section shall apply to the
13 commitment of minors to institutions within or outside the State of Vermont.

14 § 5294. INTERESTS OF JUSTICE HEARING

15 ~~Not later than the next business day after a juvenile who is awaiting trial or~~
16 ~~other legal process and who is treated as an adult for prosecution in the~~
17 ~~Criminal Division is taken into custody, the court shall hold a hearing and~~
18 ~~determine whether to issue a written order, pursuant to 34 U.S.C. §~~
19 ~~41133(a)(11)(B), that it is in the interests of justice to hold the juvenile in a jail~~
20 ~~or other secure facility for adults owned or operated by the Department of~~
21 ~~Corrections and, if such an order is issued, whether to allow sight or sound~~

1 ~~contact with adult inmates. Hearings held and orders issued pursuant to this~~
2 ~~section shall conform with the requirements of 34 U.S.C. § 11133(a)(11)(B),~~
3 ~~including the criteria set forth therein. [Repealed.]~~

4 Sec. 2. EFFECTIVE DATE

5 This act shall take effect on July 1, 2026.