

1 H.721

2 Introduced by Representatives Burditt of West Rutland and McCoy of

3 Poultney

4 Referred to Committee on

5 Date:

6 Subject: Crimes and criminal procedure; recidivism; juvenile proceedings

7 Statement of purpose of bill as introduced: This bill proposes to increase the
8 number of Big 14 offenses that commence in the Criminal Division of the
9 Superior Court rather than the Family Division when committed by a juvenile;

10 repeal the Raise the Age initiative for offenders who are 19 years of age;

11 transfer jurisdiction over youthful offender proceedings from the Family

12 Division to the Criminal Division; require the court to prioritize and expedite

13 motions to transfer juvenile proceedings between the Criminal and Family

14 Divisions; establish procedures for bail revocation and an appeal of a denial of

15 a request to revoke bail; prohibit the court from ordering a sentence that is

16 suspended, deferred, or served as a supervised sentence if a person has a prior

17 conviction for escape or three or more convictions for a felony listed crime

18 unless the court makes findings on the record that there are compelling reasons

19 why such a sentence will serve the interests of justice and protect the public;

20 prohibit the court from suspending a sentence for a person who has previously

21 been found to have violated probation, been unsatisfactorily discharged from

1 probation, or had furlough revoked unless the court makes findings on the
2 record that there are compelling reasons why such a sentence will serve the
3 interests of justice and protect the public; require the court to make written
4 findings if the court orders a deferred sentence over the objections of the
5 prosecutor; require that criminal history records related to deferred sentences
6 are sealed instead of expunged upon completion of the sentence; prohibit the
7 court from reducing the sentence for a conviction of a listed crime if the
8 defendant has three or more convictions for a listed crime or five or more
9 pending criminal charges; redefine how recidivism is calculated; establish a
10 graduated classification system to track persons who recidivate; establish
11 definitions, calculations, and classification systems to measure persons who
12 commit repeat violent offenses; repeal the statutes providing earned time and
13 midpoint probation review for sentenced offenders; establish a forensic facility
14 for certain criminal justice-involved individuals; require the court, unless
15 contrary to the interests of justice, to dismiss misdemeanor charges against a
16 person who has been found incompetent to stand trial if, after the finding of
17 incompetence, the case remains inactive for a continuous period of time equal
18 to or greater than the maximum sentence for the offense; and limit the
19 applicability of the Vermont Rules of Evidence in proceedings involving
20 competency restoration and granting or revoking conditional release from a
21 forensic facility.

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1 (B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84,
2 subchapter 1, or an attempt to commit that offense; ~~or~~

3 ~~(C) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3), or an~~
4 ~~attempt to commit that offense.~~

5 * * *

6 Sec. 2. 33 V.S.A. § 5204 is amended to read:

7 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
8 COURT

9 (a) After a petition has been filed alleging delinquency, upon motion of the
10 State's Attorney and after hearing, the Family Division of the Superior Court
11 may transfer jurisdiction of the proceeding to the Criminal Division of the
12 Superior Court if the child had attained 16 years of age but not 19 years of age
13 at the time the act was alleged to have occurred and the delinquent act set forth
14 in the petition is a felony not specified in subdivisions (1) ~~(11)~~ (14) of this
15 subsection or if the child had attained 12 years of age but not ~~14~~ 16 years of
16 age at the time the act was alleged to have occurred, and if the delinquent act
17 set forth in the petition was any of the following:

18 (1) arson causing death as defined in 13 V.S.A. § 501 or an attempt to
19 commit that offense;

20 (2) assault and robbery with a dangerous weapon as defined in 13
21 V.S.A. § 608(b) or an attempt to commit that offense;

1 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.

2 § 608(c) or an attempt to commit that offense;

3 (4) aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to
4 commit that offense;

5 (5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as
6 defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;

7 (6) manslaughter as defined in 13 V.S.A. § 2304 or an attempt to
8 commit that offense;

9 (7) kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit
10 that offense;

11 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an
12 attempt to commit that offense;

13 (9) maiming as defined in 13 V.S.A. § 2701 or an attempt to commit
14 that offense;

15 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an
16 attempt to commit that offense; ~~or~~

17 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and
18 aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an
19 attempt to commit either of those offenses;

20 (12) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3) or an
21 attempt to commit that offense;

* * *

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

(a) A youthful offender proceeding under this chapter shall be commenced

(2) ~~transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title~~ the filing of a motion in the Criminal Division of the Superior Court by the State's Attorney, the defendant, or the court on its own motion requesting that a defendant in a criminal proceeding who has attained 14 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.

1 ~~(b) A State's Attorney may commence a proceeding in the Family Division~~
2 ~~of the Superior Court concerning a child who is alleged to have committed an~~
3 ~~offense after attaining 14 years of age but not 22 years of age that could~~
4 ~~otherwise be filed in the Criminal Division.~~

5 (1) Upon the filing of a petition or a motion under subdivision (a)(1) or
6 (2) of this section and the entering of a conditional plea of guilty by the youth,
7 the Criminal Division of the Superior Court shall enter an order deferring the
8 sentence and hold a hearing on the motion. If the youth declines to enter a
9 conditional plea, youthful offender status shall be denied.

10 (2) As used in this subsection, "conditional plea of guilty" means
11 agreement by the parties to a plea arrangement that:

12 (A) includes outcomes for successful and unsuccessful youthful
13 offender rehabilitation program completion; and

14 (B) is conditioned on the granting of youthful offender status that
15 may be withdrawn in the event that youthful offender status is denied.

16 ~~(c) If a State's Attorney files a petition under subdivision (a)(1) of this~~
17 ~~section, the~~ The case shall proceed as provided under subsection 5281(b) of
18 this title. Except as provided in subdivision 5283(c)(2) of this title, upon the
19 commencement of a youthful offender proceeding, and after hearing from the
20 parties and the victim, the court may close future proceedings until youthful
21 offender status is denied or revoked if it finds for good cause shown that

1 safeguarding the physical and psychological well-being of a youth under 18
2 years of age outweighs the public's interest in open proceedings. The court
3 shall make specific findings on the record supporting an order under this
4 subsection.

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

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

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

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

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

16 Sec. 4. 33 V.S.A. § 5281 is amended to read:

17 § 5281. ~~MOTION~~ PROCEDURES IN CRIMINAL DIVISION OF
18 SUPERIOR COURT

19 (a) ~~A motion may be filed in the Criminal Division of the Superior Court~~
20 ~~requesting that a defendant under 22 years of age in a criminal proceeding who~~
21 ~~had attained 12 years of age but not 22 years of age at the time the offense is~~

1 ~~alleged to have been committed be treated as a youthful offender. The motion~~
2 ~~may be filed by the State's Attorney, the defendant, or the court on its own~~
3 ~~motion.~~

4 (b) Unless the State's Attorney refers the youth directly to court diversion
5 pursuant to subsection 5280(e) of this title, upon the filing of a motion ~~under~~
6 ~~this section~~ or the filing of a youthful offender petition pursuant to section
7 5280 of this title, the ~~Family Division court~~ shall hold a hearing pursuant to
8 section 5283 of this title. ~~Pursuant to section 5110 of this title, the~~ The hearing
9 shall be confidential as provided in section 5280 of this title. ~~Copies of all~~
10 ~~records relating to the case shall be forwarded to the Family Division.~~

11 Conditions of release and any Department of Corrections supervision or
12 custody shall remain in effect until:

13 (1) the Family Division accepts the case for treatment as a youthful
14 offender and orders conditions of juvenile probation pursuant to section 5284
15 of this title;

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

18 (3) the case is otherwise concluded.

19 ~~(e)(b)~~(1) If the Family Division rejects the case for youthful offender
20 treatment pursuant to section 5284 of this title, the case shall be transferred to
21 the Criminal Division. The conditions of release imposed by the Criminal

1 Division shall remain in effect, and the case shall proceed as though the motion
2 for youthful offender treatment or youthful offender petition had not been
3 filed.

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

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

15 Sec. 5. 33 V.S.A. § 5282 is amended to read:

16 § 5282. ~~REPORT FROM THE DEPARTMENT~~

17 ~~(a) Within 30 days after the youth has completed the risk and needs~~
18 ~~screening pursuant to section 5280 of this title, unless the court extends the~~
19 ~~period for good cause shown or the State's Attorney refers the youth directly to~~
20 ~~court diversion pursuant to subsection 5280(e) of this title, the Department for~~

1 ~~Children and Families shall file a report with the Family Division of the~~
2 ~~Superior Court.~~

3 ~~(b) A report filed pursuant to this section shall include the following~~
4 ~~elements:~~

5 ~~(1) a recommendation as to whether diversion is appropriate for the~~
6 ~~youth because the youth is a low to moderate risk to reoffend;~~

7 ~~(2) a recommendation as to whether youthful offender status is~~
8 ~~appropriate for the youth; and~~

9 ~~(3) a description of the services that may be available for the youth.~~

10 ~~(c) A report filed pursuant to this section is privileged and shall not be~~
11 ~~disclosed to any person other than:~~

12 ~~(1) the Department;~~

13 ~~(2) the court;~~

14 ~~(3) the State's Attorney;~~

15 ~~(4) the youth, the youth's attorney, and the youth's guardian ad litem;~~

16 ~~(5) the youth's parent, guardian, or custodian if the youth is under 18~~
17 ~~years of age, unless the court finds that disclosure would be contrary to the best~~
18 ~~interests of the child;~~

19 ~~(6) the Department of Corrections; or~~

20 ~~(7) any other person when the court determines that the best interests of~~
21 ~~the youth would make such a disclosure desirable or helpful. [Repealed.]~~

1 Sec. 6. 33 V.S.A. § 5283 is amended to read:

2 § 5283. DISPOSITION HEARING IN FAMILY DIVISION

3 (a) Timeline. Unless the State’s Attorney refers the youth directly to court
4 diversion pursuant to subsection 5280(e) of this title, a youthful offender
5 ~~consideration~~ disposition hearing shall be held not later than ~~60 days after the~~
6 ~~transfer of the case from the Criminal Division or filing of a youthful offender~~
7 ~~petition in the Family Division~~ 45 days after the filing of a motion or the filing
8 of a youthful offender petition under section 5280 of this title.

9 (b) Notice. Notice of the hearing shall be provided to the State’s Attorney;
10 the youth; the youth’s parent, guardian, or custodian; the victim; the
11 Department; and the Department of Corrections. The court shall not exclude
12 any victim from the proceeding or any portion of it unless, after hearing from
13 the parties and the victim, the court makes a finding on the record of good
14 cause. As used in this subsection, “victim” means a person who is the victim
15 of a crime for which a youth is charged; a parent, guardian, or legal
16 representative of the victim; or a victim’s advocate.

17 (c) Hearing procedure.

18 (1) If the motion is contested, all parties shall have the right to present
19 evidence and examine witnesses. Hearsay may be admitted and may be relied
20 on to the extent of its probative value. If reports are admitted, the parties shall

1 be afforded an opportunity to examine those persons making the reports, but
2 sources of confidential information need not be disclosed.

3 (2) For individuals who had attained 18 years of age but not 22 years of
4 age at the time the act is alleged to have been committed, hearings under
5 5284(a) of this title shall be open to the public. ~~All other youthful offender~~
6 ~~proceedings shall be confidential.~~

7 (d) Burden of proof. The burden of proof shall be on the moving party to
8 prove by a preponderance of the evidence that a child should be granted
9 youthful offender status. If the court makes the motion, the burden shall be on
10 the youth.

11 (e) Further hearing. On its own motion or the motion of a party, the court
12 may schedule a further hearing within not more than 10 business days to obtain
13 reports or other information necessary for the appropriate disposition of the
14 case.

15 Sec. 7. 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 or petition for youthful offender status, the
19 court shall first consider whether public safety will be protected by treating the
20 youth as a youthful offender. If the court finds that public safety will not be
21 protected by treating the youth as a youthful offender, the court shall deny the

1 motion and transfer the case to the Criminal Division of the Superior Court
2 pursuant to subsection 5281(d) of this title, the conditions of release imposed
3 by the Criminal Division shall remain in effect, and the case shall proceed as
4 though the motion or petition for youthful offender treatment had not been
5 filed. If the court finds that public safety will be protected by treating the
6 youth as a youthful offender, the court shall proceed to make a determination
7 under subsection (b) of this section.

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

11 (A) the nature and circumstances of the charge and whether violence
12 was involved;

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

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

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

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

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

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

1 (H) whether supervising the youth on youthful offender probation is
2 appropriate considering the nature of the charged offense and the age and
3 specialized needs of the youth;

4 (I) whether the youth has previously not successfully completed
5 youthful offender treatment or otherwise had youthful offender status revoked;

6 (J) whether the youth has connections to the community; and

7 ~~(J)~~(K) the youth's history of violence and history of illegal or violent
8 conduct involving firearms or other deadly weapons.

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

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

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

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

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

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

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

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

4 (c)(1) If the court approves the motion for youthful offender treatment ~~after~~
5 ~~an adjudication pursuant to subsection 5281(d) of this title~~, the court:

6 (A) shall place the youth on conditions of probation pursuant to
7 28 V.S.A. chapter 5, or such additional conditions imposed by the court,
8 provided that the requirements of this subdivision (A) may be satisfied by
9 entering the single condition of probation required under subdivision (C) of
10 this subdivision (c)(1);

11 ~~(B)~~ shall approve a disposition case plan and impose conditions of
12 juvenile probation on the youth; ~~and~~

13 ~~(C)~~ shall include as a condition of probation adherence to the
14 disposition case plan approved by the court; and

15 ~~(B)~~(D) may transfer legal custody of the youth to a parent, relative,
16 person with a significant relationship with the youth, or Commissioner for
17 Children and Families, provided that any transfer of custody shall expire on the
18 youth's 18th birthday.

19 (2) Prior to the approval of a disposition case plan, the court may refer a
20 child directly to a youth-appropriate community-based provider that has been
21 approved by the department and ~~which~~ that may include a community justice

1 center or a balanced and restorative justice program. Referral to a community-
2 based provider pursuant to this subdivision shall not require the court to place
3 the child on probation. If the community-based provider does not accept the
4 case or if the child fails to complete the program in a manner deemed
5 satisfactory and timely by the provider, the child shall return to the court for
6 further proceedings, including the imposition of the disposition order.

7 (d)(1) The Department for Children and Families and the Department of
8 Corrections shall be responsible for supervision of and providing services to
9 the youth until ~~the youth reaches 22 years of age~~ the earlier of:

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

11 (B) the revocation of the youth's youthful offender designation

12 pursuant to section 5285 of this title.

13 (2) ~~Both Departments~~ the Department for Children and Families and the
14 Department of Corrections shall designate a case manager who together shall
15 appoint a lead ~~Department~~ department to have final decision-making authority
16 over the case plan and the provision of services to the youth. The youth shall
17 be eligible for appropriate community-based programming and services
18 provided by ~~both Departments~~ the Agency of Human Services.

1 Sec. 8. 33 V.S.A. § 5285 is amended to read:

2 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

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

16 (b) A hearing under this section shall be held in accordance with section
17 5268 of this title.

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

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

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

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

7 (d) If a youth's status as a youthful offender is revoked ~~and the case is~~
8 ~~transferred to the Criminal Division~~ pursuant to subdivision (c)(2) of this
9 section, the court shall ~~enter a conviction of guilty based on the admission to or~~
10 ~~finding of merits~~, hold a sentencing hearing, and impose sentence in
11 accordance with the conditional plea agreed to under subsection 5280(c) of this
12 title. Unless it serves the ~~interest~~ interests of justice, the case shall not be
13 transferred back to the Family Division pursuant to section 5203 of this title.

14 When determining an appropriate sentence, the court may take into
15 consideration the youth's degree of progress toward or regression from
16 rehabilitation while on youthful offender status. The Criminal Division shall
17 have access to all Family Division records of the proceeding.

18 Sec. 9. 33 V.S.A. § 5286 is amended to read:

19 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

20 (a) If a youth is on probation as a youthful offender prior to reaching 18
21 years of age, the ~~Family Division~~ court shall review the youth's case before he

1 ~~or she~~ the youth reaches 18 years of age and set a hearing to determine whether
2 the court's jurisdiction over the youth should be continued past 18 years of
3 age. The hearing may be joined with a motion to terminate youthful offender
4 status under section 5285 of this title. The court shall provide notice and an
5 opportunity to be heard at the hearing to the State's Attorney, the youth, the
6 Department for Children and Families, and the Department of Corrections.

7 (b) After receiving a notice of review under this section, the State may file
8 a motion to modify or revoke pursuant to section 5285 of this title. If such a
9 motion is filed, it shall be consolidated with the review under this section and
10 all options provided for under section 5285 of this title shall be available to the
11 court.

12 (c) The following reports shall be filed with the court prior to the hearing:

13 (1) The Department for Children and Families and the Department of
14 Corrections shall jointly report their recommendations, with supporting
15 justifications, as to whether the ~~Family Division~~ court should continue
16 jurisdiction over the youth past 18 years of age and, if continued jurisdiction is
17 recommended, propose a case plan for the youth to ensure compliance with
18 and completion of the juvenile disposition.

19 (2) If the ~~Departments~~ departments recommend continued supervision
20 of the youthful offender past 18 years of age, the ~~Departments~~ departments
21 shall report on the services that would be available for the youth.

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

8 (e) If the court finds that it is not in the best interests of the youth to
9 continue the case past 18 years of age, it shall terminate the disposition order,
10 discharge the youth, and dismiss the case in accordance with subsection
11 5287(c) of this title.

12 Sec. 10. 33 V.S.A. § 5287 is amended to read:

13 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

14 (a) A motion or stipulation may be filed at any time in the ~~Family~~ Criminal
15 Division requesting that the court terminate the youth's status as a youthful
16 offender and discharge ~~him or her~~ the youth from probation. The motion may
17 be filed by the State's Attorney, the youth, the Department, or the court on its
18 own motion.

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

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

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

4 (3) reports of treatment personnel; and

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

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

11 (d) Upon discharge and dismissal under subsection (c) of this section, all
12 records relating to the case in the Criminal Division shall be ~~expunged, and all~~
13 ~~records relating to the case in the Family Court shall be sealed pursuant to~~
14 ~~section 5119 of this title~~ sealed.

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

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

19 * * * Repeal of Raise the Age for 19-Year-Olds * * *

20 Sec. 11. 2025 Acts and Resolves No. 4, Secs. 5–10 are amended to read:

21 Sec. 5. [Deleted.]

5 Sec. 10. [Deleted.]

10 (c) ~~Secs. 5-9 shall take effect on July 1, 2027. [Deleted.]~~

14 * * *

16 the court and heard on an expedited basis.

19 COURT

VT LEG #385993 v.1

1 (b)(1) The State's Attorney of the county where the juvenile petition is
2 pending may move in the Family Division of the Superior Court for an order
3 transferring jurisdiction under subsection (a) of this section at any time prior to
4 adjudication on the merits. The filing of the motion to transfer jurisdiction
5 shall automatically stay the time for the hearing provided for in section 5225 of
6 this title, which stay shall remain in effect until such time as the Family
7 Division of the Superior Court may deny the motion to transfer jurisdiction.
8 Motions to transfer made under this subsection shall be given priority by the
9 court and heard on an expedited basis.

10 * * *

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

12 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

13 ~~PROCEEDINGS IN THE FAMILY DIVISION~~

14 * * *

15 (f) Motions to transfer made under this section shall be given priority by
16 the court and heard on an expedited basis.

17 * * * Bail * * *

18 Sec. 16. BAIL REVOCATION; INTENT

19 It is the intent of the General Assembly that Vermont's bail revocation
20 statute is consistent with *State v. Sauve*, 159 Vt. 566 (1993); *State v. Gates*,
21 2016 VT 36; and their progeny so that repeated failures to appear in court,

1 repeated violations of conditions of release, and other violations of court orders
2 constitute a compelling State interest that falls within the statutory definition of
3 “disrupts the prosecution.”

4 Sec. 17. 13 V.S.A. § 7575 is amended to read:

5 § 7575. REVOCATION OF THE RIGHT TO BAIL

6 (a) The prosecutor, or the court on its own motion, may move to revoke
7 bail pursuant to this section.

8 (b) The right to bail may be revoked entirely if the judicial officer finds that
9 the accused has:

10 (1) intimidated or harassed a victim, potential witness, juror, or judicial
11 officer in violation of a condition of release; ~~or~~

12 (2) repeatedly violated conditions of release in a manner that ~~impedes~~
13 disrupts the prosecution of the accused; ~~or~~

14 (3) violated a condition or conditions of release that constitute a threat to
15 the integrity of the judicial system; ~~or~~

16 (4) without just cause, failed to appear at a specified time and place
17 ordered by a judicial officer; or

18 (5) in violation of a condition of release, been charged with a felony or a
19 crime against a person or an offense similar to the underlying charge, for
20 which, after hearing, probable cause is found.

1 (c) If the court revokes bail, it shall order the defendant's immediate arrest
2 without a warrant if the person is within the State and declare any bond
3 pledged by the defendant forfeited.

4 (d)(1) If a defendant's bail is revoked, the court shall set the defendant's
5 case for trial not more than 60 days from the date of revocation.

6 (2) If the trial is not commenced within 60 days after revocation and the
7 delay is not attributable to the defense, the court shall immediately schedule a
8 bail hearing for the defendant.

9 (e) If a request to revoke bail is denied, an appeal may be taken by the State
10 to a single Justice of the Supreme Court, who may hear the matter or at the
11 Justice's discretion refer it to the entire Supreme Court for hearing. No further
12 appeal may lie from the ruling of a single Justice in matters to which this
13 subsection applies. Any order so appealed shall be affirmed if it is supported
14 by the proceedings below. If the order is not supported, the Supreme Court or
15 single Justice hearing the matter may remand the case for a further hearing or
16 may, with or without additional evidence, modify or vacate the order. The
17 appeal shall be determined promptly.

18 * * * Reduced, Suspended, and Deferred Sentences * * *

19 Sec. 18. 13 V.S.A. § 7031 is amended to read:

20 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

21 (a) When a respondent is sentenced to any term of imprisonment, other
22 than for life, the court imposing the sentence shall not fix the term of

1 imprisonment, unless the term is definitely fixed by statute, but shall establish
2 a maximum and may establish a minimum term for which the respondent may
3 be held in imprisonment. The maximum term shall not be more than the
4 longest term fixed by law for the offense of which the respondent is convicted,
5 and the minimum term shall be not less than the shortest term fixed by law for
6 the offense. If the court suspends a portion of the sentence, the unsuspended
7 portion of the sentence shall be the minimum term of sentence solely for the
8 purpose of any reductions of term for good behavior as set forth in 28 V.S.A.
9 § 811. A sentence shall not be considered fixed as long as the maximum and
10 minimum terms are not identical.

11 (b) The sentence of imprisonment of any person convicted of an offense
12 shall commence to run from the date on which the person is received at the
13 correctional facility for service of the sentence. The court shall give the person
14 credit toward service of ~~his or her~~ the person's sentence for any days spent in
15 custody as follows:

16 (1) The period of credit for concurrent and consecutive sentences shall
17 include all days served from the date of arraignment or the date of the earliest
18 detention for the offense, whichever occurs first, and end on the date of the
19 sentencing. Only a single credit shall be awarded in cases of consecutive
20 sentences, and no credit for one period of time shall be applied to a later
21 period.

1 (2) In sentencing a violation of probation, the court shall give the person
2 credit for any days spent in custody from the time the violation is filed or the
3 person is detained on the violation, whichever occurs first, until the violation is
4 sentenced. In a case in which probation is revoked and the person is ordered to
5 serve the underlying sentence, the person shall receive credit for all time
6 previously served in connection with the offense.

7 (3) A defendant who has received pre-adjudication treatment in a
8 residential setting for a substance use disorder after the charge has been filed
9 shall earn a reduction of one day in the offender's minimum and maximum
10 sentence for each day that the offender receives the inpatient treatment,
11 provided the defendant has no pending criminal charges.

12 (c) If any such person is committed to a jail or other place of detention to
13 await transportation to the place at which ~~his or her~~ the person's sentence is to
14 be served, ~~his or her~~ the sentence shall commence to run from the date on
15 which ~~he or she~~ the person is received at the jail or the place of detention.

16 (d) A person who receives a zero minimum sentence for a conviction of a
17 nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301
18 shall report to probation and parole as directed by the court and begin to serve
19 the sentence in the community immediately, unless the person is serving a
20 prior sentence at the time.

1 (e) For a conviction of a listed crime pursuant to subdivision 5301(7) of
2 this title, a court shall not order a sentence that is suspended, deferred, or
3 served as a supervised sentence if the person has a prior conviction for escape
4 pursuant to section 1501 of this title or three or more convictions for a felony
5 listed crime unless the court makes findings on the record that there are
6 compelling reasons why such a sentence will serve the interests of justice and
7 protect the public.

8 (f) A court shall not suspend, in whole or in part, a sentence for a person
9 who has previously been found to have violated probation, been
10 unsatisfactorily discharged from probation, or had furlough revoked unless the
11 court makes findings on the record that there are compelling reasons why such
12 a sentence will serve the interests of justice and protect the public.

13 Sec. 19. 13 V.S.A. § 7041 is amended to read:

14 § 7041. DEFERRED SENTENCE

15 (a) Upon an adjudication of guilt and after the filing of a presentence
16 investigation report, the court may defer sentencing and place the respondent
17 on probation upon such terms and conditions as it may require if a written
18 agreement concerning the deferring of sentence is entered into between the
19 State's Attorney and the respondent and filed with the clerk of the court.

20 (b) Notwithstanding subsection (a) of this section, the court may defer
21 sentencing and place the respondent on probation without a written agreement

1 between the State's Attorney and the respondent if the following conditions are
2 met:

3 (1) [Repealed.]

4 (2) the crime for which the respondent is being sentenced is not a listed
5 crime as defined in subdivision 5301(7) of this title;

6 (3) the court orders a presentence investigation in accordance with the
7 procedures set forth in V.R.C.P. Rule 32, unless the State's Attorney agrees to
8 waive the presentence investigation;

9 (4) the court permits the victim to submit a written or oral statement
10 concerning the consideration of deferment of sentence;

11 (5) the court reviews the presentence investigation and the victim's
12 impact statement with the parties; and

13 (6) the court ~~determines~~ makes written findings that deferring sentence
14 is in the interests of justice.

15 (c) Notwithstanding subsections (a) and (b) of this section, the court may
16 not defer a sentence for a violation of section 3253a (aggravated sexual assault
17 of a child), section 2602 (lewd and lascivious conduct with a child unless the
18 victim and the defendant were within five years of age and the act was
19 consensual), subsection 3252(c) (sexual assault of a child under 16 unless the
20 victim and the defendant were within five years of age and the act was
21 consensual), subsection 3252(d) or (e) (sexual assault of a child), subdivision

1 3253(a)(8) (aggravated sexual assault), or section 3253a (aggravated sexual
2 assault of a child) of this title.

3 (d) Entry of deferment of sentence shall constitute an appealable judgment
4 for purposes of appeal in accordance with 12 V.S.A. § 2383 and V.R.A.P. Rule
5 3. Except as otherwise provided, entry of deferment of sentence shall
6 constitute imposition of sentence solely for the purpose of sentence review in
7 accordance with section 7042 of this title. The court may impose sentence at
8 any time if the respondent violates the conditions of the deferred sentence
9 during the period of deferment.

10 (e) Upon violation of the terms of probation or of the deferred sentence
11 agreement, the court shall impose sentence. Upon fulfillment of the terms of
12 probation and of the deferred sentence agreement, the court shall strike the
13 adjudication of guilt and discharge the respondent. Except as provided in
14 subsection (h) of this section, the record of the criminal proceedings shall be
15 ~~expunged~~ sealed upon the discharge of the respondent from probation, absent a
16 finding of good cause by the court. The court shall issue an order to ~~expunge~~
17 seal all records and files related to the arrest, citation, investigation, charge,
18 adjudication of guilt, criminal proceedings, and probation related to the
19 deferred sentence. Copies of the order shall be sent to each agency,
20 department, or official named therein. Thereafter, the court, law enforcement
21 officers, agencies, and departments shall reply to any request for information

1 that no record exists with respect to such person upon inquiry in the matter.

2 Notwithstanding this subsection, the record shall not be ~~expunged~~ sealed until
3 restitution has been paid in full.

4 (f) A deferred sentence imposed under subsection (a) or (b) of this section
5 may include a restitution order issued pursuant to section 7043 of this title.

6 Nonpayment of restitution shall not constitute grounds for imposition of the
7 underlying sentence.

8 (g) [Repealed.]

9 (h) The Vermont Crime Information Center shall retain a special index of
10 deferred sentences for sex offenses that require registration pursuant to
11 ~~subchapter 3 of chapter 167, subchapter 3~~ subchapter 3 of this title. This index shall only
12 list the name and date of birth of the subject of the ~~expunged~~ sealed files and
13 records, the offense for which the subject was convicted, and the docket
14 number of the proceeding that was the subject of the ~~expungement~~ sealing.

15 The special index shall be confidential and may be accessed only by the
16 director of the Vermont Crime Information Center and a designated clerical
17 staffperson for the purpose of providing information to the Department of
18 Corrections in the preparation of a presentence investigation in accordance
19 with 28 V.S.A. §§ 204 and 204a.

20 Sec. 20. 13 V.S.A. § 7042 is amended to read:

21 § 7042. SENTENCE REVIEW

1 (a) Any court imposing a sentence under the authority of this title, within
2 90 days of the imposition of that sentence, or within 90 days after entry of any
3 order or judgment of the Supreme Court upholding a judgment of conviction,
4 may upon its own initiative or motion of the defendant, reduce the sentence.

5 (b) A State's Attorney or the Attorney General, within seven business days
6 of the imposition of a sentence, may file with the sentencing judge a motion to
7 increase, reduce, or otherwise modify the sentence. This motion shall set forth
8 reasons why the sentence should be altered. After hearing, the court may
9 confirm, increase, reduce, or otherwise modify the sentence.

10 (c) After a motion is filed under subsection (b) of this section, a
11 defendant's time for filing an appeal under 12 V.S.A. § 2383 shall commence
12 to run upon entry of a final order under subsection (b).

13 (d) A court shall not reduce the sentence for a conviction of a listed crime
14 as provided by subdivision 5301(7) of this title if the defendant has three or
15 more convictions for a listed crime or five or more pending criminal charges.

16 * * * Recidivism * * *

17 Sec. 21. FINDINGS AND INTENT

18 (a) Findings. The General Assembly finds:

19 (1) The State's current definition of recidivism is based upon offenders
20 who are sentenced to more than one year of incarceration and who, after
21 release, return to an incarcerative setting within three years, but only after

1 conviction of a new offense or a violation of Department of Corrections'
2 supervision and the new sentence for the violation is not fewer than 90 days.

3 (2) The vast majority of misdemeanor crimes have maximum terms of
4 imprisonment of not more than six months.

5 (3) Few, if any, misdemeanor sentences are served in a Department of
6 Corrections' facility.

7 (4) Under current law, a person could commit 10 instances of retail theft
8 within a calendar year, be convicted of each separate offense and sentenced to
9 probation or incarcerative sentences of a few days for each offense, and the
10 behavior would not constitute recidivism.

11 (b) Intent. It is the intent of the General Assembly that:

12 (1) the definition of recidivism more accurately reflect new convictions,
13 returns to incarceration, and probation violations and revocations; and

14 (2) the State establish a statutory measure of violent crime recidivism
15 and of individual success.

16 Sec. 22. 28 V.S.A. § 3 is amended to read:

17 § 3. GENERAL DEFINITIONS

18 As used in this title:

19 (1) "Child" means any person:

1 (A) charged with having committed a delinquent act as defined in
2 33 V.S.A. § 5102 or adjudicated a delinquent and committed to the custody of
3 the Commissioner; or

4 (B) charged with being or adjudicated unmanageable as defined by
5 33 V.S.A. § 5102(3)(C) and (D), and committed to the custody of the
6 Commissioner for Children and Families and subsequently transferred to the
7 custody of the Commissioner.

8 (C) [Repealed.]

9 (2) “Commissioner” means the Commissioner of Corrections.

10 (3) “Correctional facility” or “facility” means any building, enclosure,
11 space, or structure of or supported by the Department and used for the
12 confinement of persons committed to the custody of the Commissioner, or for
13 any other matter related to such confinement.

14 (4) “Department” means the Department of Corrections.

15 (5) “Inmate” means any person, not a child, committed to the custody of
16 the Commissioner pursuant to the law of the State and subsequently committed
17 to a correctional facility and any person confined at a correctional facility
18 during the pendency of a prosecution against ~~him or her~~ the person.

19 (6) “Law” includes the laws and ordinances of the State, its political
20 subdivisions, and municipalities.

1 (7) “Law enforcement officer” means a State Police officer, a sheriff, a
2 deputy sheriff, a municipal police officer, a constable, the Commissioner, or a
3 member of the Department of Corrections when appointed in writing by the
4 Commissioner and when ~~his or her~~ the person’s appointment is filed in the
5 Office of the Secretary of State. The Commissioner or such member shall
6 have the same powers as a sheriff.

7 (8) “Offender” means any person convicted of a crime or offense under
8 the laws of this State, and, for purposes of ~~work crew~~ community restitution, a
9 person found in civil contempt under 15 V.S.A. § 603.

10 (9) “Supervising officer” means the highest administrative officer in
11 charge of any correctional facility.

12 (10) “Correctional officer” means any person who is an employee of the
13 Department of Corrections whose official duties or job classification includes
14 the supervision or monitoring of a person on parole, probation, or serving any
15 sentence of incarceration whether inside or outside a correctional facility, and
16 who has received training, as approved by the Commissioner of Corrections, as
17 provided in section 551a of this title.

18 (11) “Recidivism” means a person who is convicted of a criminal
19 offense after receiving a criminal conviction for a previous crime.

1 (12) “Repeat violent offender” means a person who commits repeated
2 criminal offenses for which the crime type against another person is considered
3 violent.

4 (13) “Restorative justice program” means a program developed and
5 implemented by the Commissioner, consistent with State policy and legislative
6 intent as provided by section 2a of this title.

7 ~~(12)(14) Despite other names this concept has been given in the past or~~
8 ~~may be given in the future, “segregation”~~ “Segregation” means a form of
9 separation from the general population that may or may not include placement
10 in a single-occupancy cell and that is used for disciplinary, administrative, or
11 other reasons, but shall not mean confinement to an infirmary or a residential
12 treatment setting for purposes of evaluation, treatment, or provision of
13 services.

14 Sec. 23. 28 V.S.A. § 4 is amended to read:

15 § 4. STANDARD MEASURE AND CLASSIFICATIONS OF RECIDIVISM;

16 REPEAT VIOLENT OFFENDERS

17 (a) Recidivism.

18 (1) Classifications. The Department shall ~~calculate~~ classify the rate type
19 of recidivism based upon ~~offenders~~ persons who are ~~sentenced to more than~~
20 ~~one year of incarceration who, after release from incarceration, return to prison~~
21 ~~within three years for a conviction for a new offense or a violation of~~

1 ~~supervision resulting, and the new incarceration sentence or time served on the~~
2 ~~violation is at least 90 days~~ convicted of a criminal offense and meet one of the
3 following:

4 (A) Class one recidivism. Not less than one year has elapsed from
5 the time of sentencing before the person commits a new offense that results in
6 a conviction.

7 (B) Class two recidivism. Not less than three years have elapsed
8 from the time of sentencing before the person commits a new offense that
9 results in a conviction.

10 (C) Class three recidivism. Not less than five years have elapsed
11 from the time of sentencing before the person commits a new offense that
12 results in a conviction.

13 (D) Class four recidivism. Not less than 10 years have elapsed from
14 the time of sentencing before the person commits a new offense that results in
15 a conviction.

16 (2) Calculations.

17 (A) Persons sentenced to incarceration will be considered eligible to
18 recidivate upon release from a correctional facility.

19 (B) Persons sentenced to a noncarceral sentence are considered
20 eligible to recidivate on the disposition date of a case.

21 (C) A conviction shall determine whether a person has recidivated.

§ 7555. PRETRIAL SUPERVISION PROGRAM

1 (a) Purpose. The purpose of the Pretrial Supervision Program is to assist
2 eligible people through the use of evidence-based strategies to improve pretrial
3 compliance with conditions of release, to coordinate and support the provision
4 of pretrial services when appropriate, to ensure attendance at court
5 appearances, and to decrease the potential to recidivate while awaiting trial.

6 (b) Definition. As used in this section, “absconded” has the same meaning
7 as “absconding” as defined in 28 V.S.A. § 722~~(1)(B)–(C)~~(1)(B) and (C).

8 (c) Pretrial supervision.

9 (1) Except as provided in subsection (g) of this section, beginning on
10 January 1, 2025, the Pretrial Supervision Program shall, if ordered by the court
11 pursuant to subsection (d) of this section, monitor defendants who have been
12 charged with violating a condition of release pursuant to section 7559 of this
13 title or have not fewer than five pending dockets and pose a risk of
14 nonappearance at court hearings, a risk of flight, or a risk of endangering the
15 public.

16 (2) The Department shall assign a pretrial supervision officer to monitor
17 defendants in a designated region of Vermont and help coordinate any pretrial
18 services needed by the defendant. The Department shall determine the
19 appropriate level of supervision using evidence-based screenings of those
20 defendants eligible to be placed in the Program. The Department’s supervision
21 levels may include use of:

- 1 (A) the Department's telephone monitoring system;
- 2 (B) telephonic meetings with a pretrial supervision officer;
- 3 (C) in-person meetings with a pretrial supervision officer;
- 4 (D) electronic monitoring; or
- 5 (E) any other means of contact deemed appropriate.

6 (3) When placing a defendant into the Program pursuant to subsection
7 (d) of this section, the court shall issue an order that sets the defendant's level
8 of supervision based on the recommendations submitted by the Department of
9 Corrections.

10 (d) Procedure.

11 (1) At arraignment or at a subsequent hearing, the prosecutor or the
12 defendant may move, or on the court's own motion, that the defendant be
13 reviewed by the court to determine whether the defendant is appropriate for
14 pretrial supervision. The review shall be scheduled upon the court's receipt of
15 a report from the Department of Corrections containing recommendations
16 pertaining to the defendant's supervision level.

17 (2) A defendant is eligible for pretrial supervision if the person has:

18 (A) violated conditions of release pursuant to section 7559 of this
19 title; or

20 (B) not fewer than five pending court dockets.

1 (3) After a hearing and review of the Department of Corrections' report
2 containing the defendant's supervision level recommendations, the court may
3 order that the defendant be released to the Pretrial Supervision Program,
4 provided that the court finds placing the defendant under pretrial supervision
5 will reasonably ensure the person's appearance in court when required, will
6 reasonably mitigate the risk of flight, or reasonably ensure protection of the
7 public. In making such a determination, the court shall consider the following:

8 (A) the nature of the violation of conditions of release pursuant to
9 section 7559 of this title;

10 (B) the nature and circumstances of the underlying offense or
11 offenses with which the defendant is charged;

12 (C) the defendant's prior convictions, history of violence, medical
13 and mental health needs, history of supervision, and risk of flight;

14 (D) any risk or undue burden to third parties or risk to public safety
15 that may result from the placement; or

16 (E) any other factors that the court deems appropriate.

17 (e) Compliance and review.

18 (1) Pretrial supervision officers shall notify the prosecutor or the court
19 and use reasonable efforts to notify the defendant of any violations of court-
20 imposed Program conditions committed by the defendant.

1 (2) Pretrial supervision officers may notify the prosecutor or the court
2 and use reasonable efforts to notify the defendant of any violations of
3 Department-imposed administrative conditions committed by the defendant.

4 (3) Upon the motion of the prosecutor or the defendant, or on the court's
5 own motion, a defendant's compliance with pretrial supervision conditions
6 may be reviewed by the court.

7 (4) Upon submission of the pretrial supervision officer's sworn affidavit
8 to the court by either the prosecutor or the pretrial supervision officer, the
9 court:

10 (A) may issue a warrant for the arrest of a defendant who fails to
11 report to the pretrial supervision officer, commits ~~multiple~~ one or more
12 violations of supervision requirements, or has absconded; and

13 (B) shall issue a warrant for the arrest of a defendant who meets the
14 criteria of subdivision (A) of this subdivision (e)(4) if the defendant also has
15 five or more pending criminal charges.

16 (f) Policies and procedures.

17 (1) On or before November 1, 2024, the Department of Corrections shall
18 establish written policies and procedures for the Pretrial Supervision Program
19 to be used by the Department and any contractors or grantees that the
20 Department engages with to assist in the monitoring operations of the Program
21 and to assist the courts in understanding the Program.

1 (2) The Department shall develop policies and procedures concerning
2 supervision levels, evidence-based criteria for each supervision level, and the
3 means of contact that is appropriate for each supervision level.

4 (g) Contingent on funding. The Pretrial Supervision Program established
5 in this section shall operate only to the extent funds are appropriated for its
6 operation. If the Program is not operating in a particular county, the courts
7 shall not order pretrial supervision as a condition of release in accordance with
8 section 7554 of this title.

9 (h) Program support. The Department may support the operation of the
10 Program through grants of financial assistance to, or contracts for services
11 with, any public entity that meets the Department's requirements.

12 * * * Repeal of Earned Time and Midpoint Review * * *

13 Sec. 26. REPEAL

14 28 V.S.A. § 818 (earned time; reduction of term) is repealed.

15 Sec. 27. 28 V.S.A. § 252 is amended to read:

16 § 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

17 * * *

18 (d) ~~Review and recommendation for discharge.~~

19 ~~(1) The Commissioner shall review the record of each probationer~~
20 ~~serving a specified term during the month prior to the midpoint of that~~

1 ~~probationer's specified term and shall file a motion requesting the sentencing~~
2 ~~court to dismiss the probationer from probation if the offender:~~

3 ~~(A) has not been found by the court to have violated the conditions of~~
4 ~~probation in the six months prior to the review;~~

5 ~~(B) is not serving a sentence for committing a crime specified in 13~~
6 ~~V.S.A. chapter 19, subchapters 6 and 7; 13 V.S.A. chapter 72, subchapter 1; or~~
7 ~~13 V.S.A. § 2602; and~~

8 ~~(C) has completed those rehabilitative or risk reduction services~~
9 ~~required as a condition of probation that have a duration that is set and~~
10 ~~knowable at the outset of probation.~~

11 ~~(2) If the probationer does not meet the criteria set forth in subdivision~~
12 ~~(1) of this subsection, the Commissioner shall file a motion requesting the~~
13 ~~sentencing court to discharge the probation term once the probationer meets~~
14 ~~the criteria set forth in subdivision (1) of this subsection.~~

15 ~~(3) If a probationer meets the criteria set forth in subdivision (1) of this~~
16 ~~subsection and is subject to a pending criminal charge or violation of probation~~
17 ~~complaint, the Commissioner may file a motion requesting the sentencing~~
18 ~~court to dismiss the probationer from probation pursuant to this subsection.~~
19 ~~The motion shall identify the pending criminal charge or probation violation.~~
20 ~~After any pending criminal charges and probation violations are resolved, and~~
21 ~~if the probationer still meets the criteria set forth in subdivision (1) of this~~

1 ~~subsection, the Commissioner shall file the motion requesting the sentencing~~
2 ~~court to dismiss the probationer from probation.~~

3 (4) ~~The prosecutor shall make a reasonable effort to notify any victim of~~
4 ~~record of a motion filed to reduce a probationer's term pursuant to this~~
5 ~~subsection. "Reasonable effort" means attempting to contact the victim by~~
6 ~~first class mail at the victim's last known address and by telephone at the~~
7 ~~victim's last known phone number.~~

8 (5) ~~Notwithstanding 1 V.S.A. § 214, and notwithstanding the~~
9 ~~requirement in subdivision (1) of this subsection that the Commissioner review~~
10 ~~the probationer's record during the month prior to the midpoint of that~~
11 ~~probationer's specified term, this subsection shall apply retroactively to any~~
12 ~~probationer serving a specified term of probation. If the probationer has~~
13 ~~already reached the midpoint of that probationer's specified term on or before~~
14 ~~the effective date of this act, the Commissioner shall review the probationer's~~
15 ~~record as soon as possible for purposes of filing a motion pursuant to this~~
16 ~~section. [Repealed.]~~

17 Sec. 28. PROSPECTIVE EFFECT

18 (a) Sec. 26 of this act shall not be construed to limit or affect earned time
19 that an offender has earned on or before the effective date of this act.

1 (b) Sec. 27 of this act shall not be construed to limit or affect orders to
2 dismiss or discharge a defendant from probation pursuant to this section issued
3 by the court on or before the effective date of this act.

4 * * * Forensic Facility * * *

5 Sec. 29. 13 V.S.A. § 4815a is added to read:

6 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN
7 FORENSIC FACILITY

8 (a) An individual shall be transferred to the forensic facility established in
9 section 4826 of this title if the individual has been charged with an offense
10 punishable by a life sentence, is not deemed a “person in need of treatment”
11 pursuant to 18 V.S.A. § 7101, and has been found not competent to stand trial.

12 (b) Upon admission, the forensic facility shall cause the individual to be
13 evaluated for competency to stand trial not less often than the shorter of either
14 every six months or upon the determination by the forensic facility’s clinical
15 services director that the individual is likely competent to stand trial. The
16 results of all evaluations shall be supplied to the court and the parties to the
17 underlying criminal action.

18 (c) An individual shall remain at the forensic facility until the individual
19 receives a verdict in the individual’s underlying criminal case or until the
20 charges against the individual have been dismissed.

1 (d) The individual shall receive competency restoration services while at
2 the forensic facility according to a plan approved by the forensic facility's
3 clinical services director. Such services may include any appropriate
4 combination of medication, education, accommodations, habilitation, or other
5 services identified as necessary or proper to achieve and maintain competency
6 to stand trial. The individual's refusal to receive competency restoration
7 services shall not be grounds for release or dismissal from the forensic facility.

8 (e) Competency restoration services shall be maintained until the individual
9 receives a verdict in the individual's underlying criminal case.

10 (f) The Commissioner shall receive prior approval of the Criminal Division
11 of the Superior Court where the individual's underlying criminal charge is
12 pending for any competency restoration plan involving involuntary medication.
13 The court shall not approve involuntary medication unless the court finds that
14 the involuntary medication is clinically appropriate and is likely to aid in the
15 restoration of the individual's competency to stand trial.

16 Sec. 30. 13 V.S.A § 4819a is added to read:

17 § 4819a. FORENSIC FACILITY PLACEMENT FOR INDIVIDUALS

18 AQUITTED OF CERTAIN CRIMES

19 (a) An individual shall be transferred to the forensic facility established in
20 section 4826 of this title if the individual has been acquitted of an offense
21 punishable by a life sentence pursuant to section 4819 of this chapter and the

1 individual is not deemed a “person in need of treatment” pursuant to 18 V.S.A.
2 § 7101.

3 (b)(1) A hearing shall be held by the Criminal Division of the Superior
4 Court within 40 days after admission to the forensic facility, unless that period
5 is extended by the court.

6 (2) At the hearing, the court shall order the individual committed to the
7 forensic facility, unless the individual establishes by clear and convincing
8 evidence that the individual is no longer suffering from a mental disease or
9 defect that, upon the individual’s release, would create a substantial risk of
10 bodily injury to another person or serious damage to property of another
11 person. If the court finds that the individual has established the individual’s
12 burden under this subdivision, the court may enter an order consistent with
13 subdivision (d)(2) of this section.

14 (3) Prior to the date of the hearing, the court shall order that a
15 psychiatric or psychological examination of the individual be conducted, and
16 that a psychiatric or psychological report be filed with the court addressing the
17 individual’s history and present symptoms; a description of the psychiatric,
18 psychological, and medical tests that were employed and their results; the
19 examiner’s findings; and the examiner’s opinions as to diagnosis, prognosis,
20 and whether the individual is suffering from a mental disease or defect that,

1 upon the individual's release, would create a substantial risk of bodily injury to
2 another person or serious damage to property of another person.

3 (c) A placement of an individual at the forensic facility shall be for an
4 indeterminate period and shall not have a specified end date. The individual
5 shall not be released until the individual establishes by clear and convincing
6 evidence that the individual is no longer suffering from a mental disease or
7 defect that, upon the individual's release, would create a substantial risk of
8 bodily injury to another person or serious damage to property of another
9 person.

10 (d)(1) The Commissioner of Corrections shall petition the unit of the
11 Criminal Division of the Superior Court in which the acquittal was returned
12 not less frequently than the shorter of every five years or upon certification by
13 the clinical services director that the individual is no longer suffering from a
14 mental disease or defect that, upon the individual's release, would create a
15 substantial risk of bodily injury to another person or serious damage to
16 property of another person.

17 (2) If the reviewing court finds by clear and convincing evidence that
18 the individual is no longer suffering from a mental disease or defect that, upon
19 the individual's release, would create a substantial risk of bodily injury to
20 another person or serious damage to property of another person, the court shall:

1 (A) order the release of the individual under a prescribed regimen of
2 medical, psychiatric, or psychological care or treatment that the forensic
3 facility's clinical services director has certified as appropriate, and that has
4 been found by the court to be appropriate; and

5 (B) order, as an explicit condition of release, that the individual
6 comply with the prescribed regimen of medical, psychiatric, or psychological
7 care or treatment together with any other conditions appropriate to protect the
8 public.

9 (e) The Commissioner of Corrections shall actively monitor compliance
10 with orders issued under subdivision (d)(2) of this section and shall
11 immediately return the person to the forensic facility if the Commissioner or
12 the Commissioner's agents determine that the individual is noncompliant with
13 the order and that the noncompliance may create a risk of bodily injury to
14 another person or serious damage to property of another. The Commissioner
15 shall notify the Criminal Division of the Superior Court in the county where
16 the individual was acquitted upon return of the individual to the forensic
17 facility. Upon readmission, the court shall hold a hearing where the
18 Commissioner shall have the burden of establishing by a preponderance of the
19 evidence that the individual was noncompliant with the court's order for
20 conditional release and that the noncompliance creates a risk of bodily injury
21 to another person or serious damage to property of another.

1 Sec. 31. 13 V.S.A. § 4826 is added to read:

2 § 4826. FORENSIC FACILITY

3 (a) The Commissioner of Corrections shall establish and operate a locked
4 secure forensic facility for the assessment and safe housing of individuals who
5 are subject to any stage of proceedings under this chapter or who have been
6 acquitted pursuant to section 4819 of this chapter. The forensic facility shall
7 not refuse any individuals it is ordered to admit, nor shall it require any clinical
8 or diagnostic prerequisites for admission. All forensic, clinical, and
9 competency restoration services provided at the forensic facility shall be
10 overseen by a clinical services director.

11 (b) Any records related to an individual placed at the forensic facility shall
12 be exempt from public inspection and copying under the Public Records Act
13 and shall be kept confidential, except that records shall be made available to
14 the parties in the underlying criminal case upon request.

15 (c) Individuals shall be admitted to and maintained at the forensic facility
16 pursuant to sections 4815a and 4819a of this section.

17 (d) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
18 implement this section.

19 Sec. 32. RULEMAKING; FORENSIC FACILITY

20 Pending the adoption of permanent rules pursuant to 3 V.S.A. chapter 25 to
21 implement the provisions of Secs. 29–31 of this act, the Commissioner of

1 Corrections shall adopt emergency rules pursuant to 3 V.S.A. § 844 not later
2 than January 1, 2027, which shall be deemed to meet the emergency
3 rulemaking standard in 3 V.S.A. § 844(a).

4 Sec. 33. 13 V.S.A. § 4817 is amended to read:

5 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

6 DISMISSAL

7 * * *

8 (e) When a person has been found incompetent to stand trial for an alleged
9 misdemeanor offense, the charges against the person shall be dismissed with
10 prejudice if, after the finding of incompetence, the case remains inactive for a
11 continuous period of time equal to or greater than the maximum sentence for
12 the offense. Dismissal under this section shall not be required if the court finds
13 that dismissing the case would be contrary to the interests of justice.

14 Sec. 34. Rule 1101 of the Vermont Rules of Evidence is amended to read:

15 RULE 1101. APPLICABILITY OF RULES

16 (a) Rules applicable. Except as otherwise provided in subdivision (b),
17 these rules apply to all actions and proceedings in the courts of this state.

18 (b) Rules inapplicable. The rules other than those with respect to privileges
19 do not apply in the following situations:

20 * * *

1 (3) Miscellaneous Proceedings. Proceedings for extradition or rendition;
2 inquest proceedings; except as otherwise provided by statute or rule
3 promulgated by the Supreme Court, sentencing or granting or revoking
4 probation; proceedings concerning competency restoration; granting or
5 revoking conditional release from a forensic facility; finding probable cause
6 for arrests without warrant and issuance of citations, warrants for arrest,
7 criminal summonses, and search warrants.

8 * * *

9 * * * Effective Dates * * *

10 Sec. 35. EFFECTIVE DATES

11 (a) This section and Secs. 1–15 shall take effect on passage.

12 (b) Secs. 16–34 shall take effect July 1, 2026.