

# Legislative Council CLE: Acts 153 and 162

June 20, 2016

# Juvenile Delinquency Statutes: Pre-Act 153 Overview

- Currently the Family Division (FD) generally has exclusive jurisdiction over delinquency proceedings, subject to exceptions, until a child reaches 18.
- Exceptions:
  - For juveniles ages 10 to 13 who commit a “Big 12” offense, the proceeding starts in the FD and may be transferred up to the Criminal Division (CD).
  - Juveniles age 14 and over who commit a “Big 12” are charged in the CD, the proceeding may be transferred down to the FD.
  - Juveniles age 16 and over who commit something other than the “Big 12” can be charged in either the FD or the CD, and either Division may transfer.
- “Big 12” = arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, maiming, sexual assault, aggravated sexual assault, and burglary into an occupied dwelling.
- Youthful offender status: State’s Attorney, defendant, or Court may file a motion in the CD requesting that a juvenile under 18 be treated as a youthful offender. FD determines YO on a case-by-case basis.

# **Act 153 (H.95): An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court**

- Makes incremental changes in how youth are adjudicated in Vermont:
  - July, 2016: 10-11 year olds charged with a Big 12 offense can only be charged and adjudicated in the Family Division.
  - January, 2017: 16 year olds who commit a misdemeanor or felony (not Big 12) must be charged in the FD. Misdemeanors shall be adjudicated in FD, but felony charges may be transferred to Criminal Division on motion.
  - January, 2018: 17 year olds are treated the same as 16 year olds.
  - July, 2018: extends youthful offender status from 17 year olds to 21 year olds.

# Act 153 (H.95) Rollout: July 1, 2016

- A juvenile 12 or older who commits a Big 12 offense may be adjudicated in the CD; juveniles under 12 who commit a Big 12 offense shall be adjudicated in the FD.
- Broadens the authority of the Commissioner of DCF to include the ability to administer graduated sanctions as established by Department policy.
- Allows State's Attorney to refer a child to a community-based provider approved by DCF instead of filing a charge. If the provider does not accept the case or the child does not complete the program, the case returns to the State's Attorney for charging.
- Provides that if a juvenile violates the terms of probation, the FD may transfer supervision of the youth to the DOC with all the powers and authority of the DOC, including graduated sanctions and electronic monitoring.
- Provides that youths 14–16 who are charged with listed crimes must be arraigned within 24 hours of arrest.
- Expands the FD's jurisdiction to include proceedings involving misdemeanor motor vehicle offenses.
- Directs Agency of Education to explore the use of restorative justice practices regarding school climate, including truancy, bullying, harassment, and school discipline.

# Act 153 (H.95) Rollout: January 1, 2017

- A youth 16 or younger charged with a misdemeanor shall be charged and adjudicated as a juvenile delinquent in the FD.
- A youth 16 or younger charged with a felony (not Big 12) shall be charged as a juvenile delinquent in the FD, but upon motion, the court may transfer the proceeding to the CD.
- The CD shall transfer any misdemeanor or felony (not Big 12) charge against a youth 16 or younger to the FD.
- The FD may transfer a juvenile delinquency petition to the CD if the child is 16 or 17 and is charged with a felony (not Big 12).
- If a youth 16 or older adjudicated as an adult was charged with a felony (not Big 12) but is convicted of a lesser included misdemeanor, the case shall be transferred to the FD for disposition and the conviction shall be treated as an adjudication of delinquency.

# Act 153 (H.95) Rollout: January 1, 2018

- If a juvenile is 16 or 17 when he or she commits any offense for which he or she is adjudicated juvenile delinquent, the jurisdiction of the FD may be extended six months beyond his or her 19th birthday.
- A youth 17 or younger charged with a misdemeanor shall be charged and adjudicated as a juvenile delinquent in the FD.
- A youth 17 or younger charged with a felony (not Big 12) shall be charged as a juvenile delinquent in the FD, but upon motion, the court may transfer the proceeding to the CD.
- The CD shall transfer any misdemeanor or felony (not Big 12) charge against a youth 17 or younger to the FD.

# Act 153 (H.95) Rollout: July 1, 2018

- Youthful offender proceedings in the FD can begin by a State's Attorney initiating a case there against a youth 16–21 years of age as a youthful offender. The proceeding can also commence by a transfer from the CD.
- Juveniles 12–21 years of age can move to be treated as youthful offenders in the FD.
- The requirement that a juvenile must enter a conditional plea of guilty in the CD prior to transferring to the FD for youthful offender status is eliminated. If the FD accepts the case for youthful offender status and the youth is adjudicated as a youthful offender, the court will create a criminal case that reflects the charge and conviction.

# **Act 162 (S.154): An act related to stalking, criminal threatening, and enhanced penalties for assault**

Four areas of Act 162:

- Stalking
- Enhanced penalty for assault
- Criminal threatening
- Safety training reporting



# Act 162: Stalking

The stalking sections of Act 162 represent an effort to modernize and expand Vermont's stalking statutes to better address the manner in which stalking behaviors occur and stalking crimes are perpetrated.

# Stalking definition

- “Stalk” is defined to mean:
  - to engage purposefully in a course of conduct directed at a specific person; and
  - that the person engaging in the conduct knows or should know their conduct would cause a reasonable person to fear for his or her safety or the safety of a family member; or
  - would cause a reasonable person to suffer substantial emotional distress.
- Emotional distress must be evidenced by either:
  - a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or
  - significant modifications in the person’s actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person’s life, changes to the person’s employment or work schedule, or the loss of a job or time from work.

# Stalking: “Course of Conduct”

- Must cause a reasonable person to fear unlawful conduct or to experience substantial emotional distress evidenced by significant modifications in the person’s actions or routines.
- The reasonable person standard is an objective one, based not on a particular person’s subjective response but on how a reasonable person would respond.

# Act 162: Enhanced penalty for assault

- Currently covers law enforcement, firefighters, health care workers, and emergency medical personnel
- Moves list of protected individuals to a new definition: “protected professional”
- Adds employees, grantees, and contractors of the Department for Children and Families (DCF) to the list of individuals covered by the statute
- Provides that a person can also be convicted under the enhanced penalty statute if he or she assaulted the protected professional with the intent to prevent the person from performing his/her lawful duty

# Act 162: Criminal Threatening

- Creates a new misdemeanor crime of criminal threatening when a person knowingly:
  - (1) threatens another person; and
  - (2) as a result of the threat, places the victim in reasonable fear of death or serious bodily injury.
- Carries a penalty of not more than one year or not more than a \$1,000.00 fine, or both
- Provides for a heightened penalty if the person made the threat with the intent to prevent a person from reporting suspected child abuse or neglect to DCF.
- Provides an affirmative defense to a charge of criminal threatening if the person did not have the ability to carry out the threat.

# Act 162: Safety Trainings Report

Requires the Department for Children and Families, in collaboration with the Vermont State Employees' Association, to conduct a review of the safety trainings available to the employees, contractors, and grantees of DCF and the employees of the State of Vermont and report back to the committees of jurisdiction.