

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.618

Name of Bill: An act relating to exclusive jurisdiction over delinquency proceedings by the family division of the superior court

Agency/ Dept: AHS/FSD/Family Services Division

Author of Bill Review: Cindy Walcott, Deputy Commissioner

Date of Bill Review: 2/5/2014

Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☒ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill proposes to:

- 1) require that all charges involving criminal conduct by children under 18 years of age be filed as delinquency proceedings in the Family Division of the Superior Court rather than the Criminal Division – even listed crimes
- 2) provide the Family Division with exclusive jurisdiction over the proceedings, with no provision for transfer to criminal division;
- 3) permit the Family Division to extend jurisdiction (but not DCF custody) over the child until he or she reaches 21 years of age; and
- 4) repeal youthful offender provisions altogether.

2. Is there a need for this bill? *Please explain why or why not.*

Too many 16 and 17 years olds in Vermont facing criminal charges are being charged as adults. If convicted, they will have an adult criminal record. This has many negative ramifications for their future.

Historically and currently, for 16 and 17 year olds charged with a crime state's attorneys have discretion about whether to file in family division or criminal division. Because juvenile jurisdiction is time-limited and adult jurisdiction is not, some state's attorney have been reluctant to use the juvenile, as they feel that there will not be enough time to address the young person's needs and risks.

Two years ago, in an attempt to reduce the disincentive for state's attorneys, the juvenile statute (33 VSA Chap § 5103) was revised to extend juvenile jurisdiction from age 18 to age 18.5 under certain circumstances:

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“Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.”

Although it is too soon to determine true impact of this change, it does appear that in several counties, the percent of 16 and 17 years old whose dispositions are in the criminal division has substantially dropped.

| % 16-17 year old charges disposed in Criminal Division | | | | | |
|--|-----|-----|------|-----|------|
| 2012 | | | 2013 | | Chg |
| | # | % | # | % | |
| STATE | 298 | 39% | 315 | 38% | -1% |
| AD | 20 | 56% | 32 | 52% | -4% |
| BN | 28 | 50% | 40 | 43% | -7% |
| CAL | 2 | 5% | 2 | 5% | 0% |
| CHTT | 67 | 51% | 43 | 27% | -24% |
| FRNK | 50 | 50% | 39 | 46% | -4% |
| LAM | 11 | 44% | 8 | 23% | -21% |
| ORG | 15 | 54% | 9 | 47% | -7% |
| ORL | 5 | 15% | 18 | 34% | 19% |
| RUT | 29 | 45% | 58 | 62% | 17% |
| WSH | 28 | 38% | 31 | 43% | 5% |
| WNDH | 17 | 35% | 5 | 12% | -23% |
| WNDSR | 26 | 48% | 28 | 40% | -8% |

The bill as introduced is clearly intended to reflect current research on brain development, which indicates that the frontal lobe is not fully developed until about age 25, and decisions by the US Supreme Court that reflect their view that juveniles lack the same culpability as adults.

However, it appears to go way too far. If implemented, this could result youth being charged with the most heinous crimes being treated as juveniles, with no capacity to incarcerate them once they turn 18.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

So far, the change made in 2012 has not had significant impact on DCF Family Services workload or budget. Caseloads for juvenile probation and delinquents in DCF custody have remained relatively stable. We continue to serve these youth people directly, and through our BARJ (Balanced and Restorative Justice Programs) statewide. The impact of this bill, however, would be very substantial because it offers no options for dealing with more serious crimes in a different way.

However, going from 18.5 to 21 could have more substantial impact. Even though the statute would still not allow DCF custody past the 18th birthday, delinquents between the age of 18 and 21 still need services to address the issues that underlie their delinquent behavior.

- 1) The availability of Woodside remains restricted to underage 18. This is as it should be. We cannot mix juveniles and adults.
- 2) There would be no ability to incarcerate adjudicated delinquents between ages 18 and 21.
- 3) Nor can we place them in residential care due to licensing concerns (and even if we could, we are not budgeted to do so).
- 4) There would be no way to ensure accountability of adjudicated delinquents between ages 18-21. DCF would have supervision over the most violent offenders, with no ability to serve them.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

This would have a positive impact on DOC, as they would serve far fewer in this age group. The judiciary and juvenile defender are already handling these cases. However, there would be a workload shift from criminal division judges to family division judges. Judge Davenport's opinion should be sought.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

State's attorneys would lose discretion. Diversion programs would be impacted, but these young adults are already being served by them.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Juvenile Defender, Court Diversion Programs, some State's Attorneys, the Council for Children and Families Prevention Programs would support some aspects of this, but I believe they would also be concerned about the unintended consequences.

6.2 Who else is likely to oppose the proposal and why?

State's attorneys may oppose, as it significantly reduces their discretion. The public would likely have significant concerns about public safety issues.

7. Rationale for recommendation: *Justify recommendation stated above.*

This bill goes way too far, in that it allows for no juveniles and no crimes to be handled in the criminal division, and it removes youthful offender provisions entirely. This bill, as written, jeopardizes public safety.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

- 1) As a general rule, require all filings for youth under 18 to begin in family division, but retain the provisions for transfer to criminal division for serious crimes, including those listed as in 33 VSA § 5204
- 2) Modify 33 VSA Chap § 5103, as follows: "Jurisdiction over a child who has been adjudicated delinquent may be extended until ~~six~~ twelve months beyond the child's 18th birthday if the offense for which the

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child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.”

- 3) Retain youthful offender status, which would have to be modified, as cases would rarely originate in criminal court.

Secretary/Commissioner has reviewed this document: _____ **Date:** _____