

1 Introduced by Senator Sears

2 Referred to Committee on

3 Date:

4 Subject: Family Division; youthful offender; juvenile delinquency

5 Statement of purpose of bill as introduced: This bill proposes to amend
6 generally the statutes related to adjudicating juvenile delinquency and youthful
7 offender cases.

8 An act relating to juvenile jurisdiction

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

10 Sec. 1. 33 V.S.A. § 5102 is amended to read:

11 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

12 As used in the juvenile judicial proceedings chapters:

13 (1) “Care provider” means a person other than a parent, guardian, or
14 custodian who is providing the child with routine daily care but to whom
15 custody rights have not been transferred by a court.

16 (2) “Child” means any of the following:

17 (A) an individual who is under the age of 18 and is a child in need of
18 care or supervision as defined in subdivision (3)(A), (B), or (D) of this section
19 (abandoned, abused, without proper parental care, or truant);

1 (B)(i) an individual who is under the age of 18, is a child in need of
2 care or supervision as defined in subdivision (3)(C) of this section (beyond
3 parental control), and was under the age of 16 at the time the petition was filed;
4 or

5 (ii) an individual who is between the ages of 16 to 17.5, is a child
6 in need of care or supervision as defined in subdivision (3)(C) of this section
7 (beyond parental control), and who is at high risk of serious harm to himself or
8 herself or others due to problems such as substance abuse, prostitution, or
9 homelessness.

10 (C) An individual who has been alleged to have committed or has
11 committed an act of delinquency after becoming 10 years of age and prior to
12 becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of
13 this title; provided, however:

14 (i) ~~that an individual who is alleged to have committed an act~~
15 ~~specified in subsection 5204(a) of this title after attaining 12 years of age but~~
16 ~~not 14 years of age may be treated as an adult as provided therein;~~

17 (ii) ~~that an individual who is alleged to have committed an act~~
18 ~~specified in subsection 5204(a) of this title after attaining the age of 14 but not~~
19 ~~the age of 16 shall be subject to criminal proceedings as in cases commenced~~
20 ~~against adults, unless transferred to the court in accordance with the juvenile~~
21 ~~judicial proceedings chapters;~~

1 (c)(1) Except as otherwise provided by this title and by subdivision (2) of
2 this subsection, jurisdiction over a child shall not be extended beyond the
3 child's 18th birthday.

4 (2)(A) Jurisdiction over a child with a pending delinquency may be
5 extended until six months beyond the child's 19th birthday if the child was
6 16 or 17 years of age when he or she committed the offense.

7 (B) In no case shall custody of a child or youth 18 years of age or
8 older be retained by or transferred to the Commissioner for Children and
9 Families.

10 (C) Jurisdiction over a child in need of care or supervision shall not
11 be extended beyond the child's 18th birthday.

12 (D) ~~[Repealed.]~~ Jurisdiction over a youthful offender shall not extend
13 beyond the youth's 22nd birthday.

14 (d) The Court may terminate its jurisdiction over a child prior to the child's
15 18th birthday by order of the court. If the child is not subject to another
16 juvenile proceeding, jurisdiction shall terminate automatically in the following
17 circumstances:

18 (1) upon the discharge of a child from juvenile or youthful offender
19 probation, providing the child is not in the legal custody of the Commissioner;

20 (2) upon an order of the court transferring legal custody to a parent,
21 guardian, or custodian without conditions or protective supervision;

1 Sec. 4. 33 V.S.A. § 5280 is amended to read:

2 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

3 PROCEEDINGS IN THE FAMILY DIVISION

4 (a) A proceeding under this chapter shall be commenced by:

5 (1) the filing of a youthful offender petition by a State's Attorney; or

6 (2) transfer to the Family Court of a proceeding from the Criminal

7 Division of the Superior Court as provided in section 5281 of this title.

8 (b) A State's Attorney may commence a proceeding in the Family Division
9 of the Superior Court concerning a child who is alleged to have committed an
10 offense after attaining ~~16~~ 14 years of age but not 22 years of age that could
11 otherwise be filed in the Criminal Division, except that proceedings concerning
12 individuals charged with committing an act specified in subsection 5204(a) of
13 this title after attaining 18 years of age but not 22 years of age must commence
14 in the Criminal Division.

15 (c) If a State's Attorney files a petition under subdivision (a)(1) of this
16 section, the case shall proceed as provided under subsection 5281(b) of this
17 title.

18 (d) Within 15 days after the commencement of a youthful offender
19 proceeding pursuant to subsection (a) of this section, the youth shall be offered
20 a risk and needs screening, which shall be conducted by the Department or by
21 a community provider that has contracted with the Department to provide risk

1 and needs screenings. The risk and needs screening shall be completed prior to
2 the youthful offender status hearing held pursuant to section 5283 of this title.
3 Unless the court extends the period for the risk and needs screening for good
4 cause shown, the Family Division shall reject the case for youthful offender
5 treatment if the youth does not complete the risk and needs screening within
6 15 days of the offer for the risk and needs screening.

7 (1) The Department or the community provider shall report the risk level
8 result of the screening, the number and source of the collateral contacts made,
9 and the recommendation for charging or other alternatives to the State's
10 Attorney.

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

17 (e) If a youth presents a low to moderate risk to reoffend based on the
18 results of the risk and needs screening, the State's Attorney shall refer a youth
19 directly to court diversion unless the State's Attorney states on the record at the
20 hearing held pursuant to section 5283 of this title why a referral would not
21 serve the ends of justice. If the court diversion program does not accept the

1 case or if the youth fails to complete the program in a manner deemed
2 satisfactory and timely by the provider, the youth's case shall return to the
3 State's Attorney for charging consideration.

4 Sec. 5. 33 V.S.A. § 5281 is amended to read:

5 § 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

6 (a) A motion may be filed in the Criminal Division of the Superior Court
7 requesting that a defendant under 22 years of age in a criminal proceeding who
8 had attained 12 years of age but not 22 years of age at the time the offense is
9 alleged to have been committed be treated as a youthful offender. The motion
10 may be filed by the State's Attorney, the defendant, or the court on its own
11 motion, unless the charged offense is an act specified in subsection 5204(a) of
12 this title and the individual charged had attained 20 years of age but not 22
13 years of age at the time the act is alleged to have been committed, pursuant to
14 subdivision (e) of this section.

15 (b) ~~Upon~~ Unless the State's Attorney refers the youth directly to court
16 diversion pursuant to subsection 5280(e) of this title, upon the filing of a
17 motion under this section or the filing of a youthful offender petition pursuant
18 to section 5280 of this title, the Family Division shall hold a hearing pursuant
19 to section 5283 of this title. Pursuant to section 5110 of this title, the hearing
20 shall be confidential. Copies of all records relating to the case shall be

1 forwarded to the Family Division. Conditions of release and any Department
2 of Corrections supervision or custody shall remain in effect until:

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

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

8 (3) the case is otherwise concluded.

9 (c)(1) If the Family Division rejects the case for youthful offender
10 treatment pursuant to subsection 5284 of this title, the case shall be transferred
11 to the Criminal Division. The conditions of release imposed by the Criminal
12 Division shall remain in effect, and the case shall proceed as though the motion
13 for youthful offender treatment or youthful offender petition had not been
14 filed.

15 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and
16 Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of
17 the motion for youthful offender treatment and any information related to the
18 youthful offender proceeding shall be inadmissible against the youth for any
19 purpose in the subsequent Criminal Division proceeding.

1 (d) If the Family Division accepts the case for youthful offender treatment,
2 the case shall proceed to a confidential merits hearing or admission pursuant to
3 sections 5227–5229 of this title.

4 (e) For individuals charged with committing an act specified in subsection
5 5204(a) who had attained 20 years of age but not 22 years of age at the time
6 the act is alleged to have been committed, only the State’s Attorney may file a
7 motion in the Criminal Division requesting the individual be treated as a
8 youthful offender

9 Sec. 6. 33 V.S.A. § 5282 is amended to read:

10 § 5282. REPORT FROM THE DEPARTMENT

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

17 (b) A report filed pursuant to this section shall include the following
18 elements:

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

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

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

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

6 (1) the Department;

7 (2) the court;

8 (3) the State's Attorney;

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

10 (5) the youth's parent, guardian, or custodian if the youth is under
11 18 years of age, unless the court finds that disclosure would be contrary to the
12 best interest of the child;

13 (6) the Department of Corrections; or

14 (7) any other person when the court determines that the best interests of
15 the youth would make such a disclosure desirable or helpful.

16 Sec. 7. 33 V.S.A. § 5283 is amended to read:

17 § 5283. HEARING IN FAMILY DIVISION

18 (a) Timeline. A Unless the State's Attorney refers the youth directly to
19 court diversion pursuant to subsection 5280(e) of this title, a youthful offender
20 status consideration hearing shall be held no later than ~~35~~ 60 days after the

1 transfer of the case from the Criminal Division or filing of a youthful offender
2 petition in the Family Division.

3 (b) Notice. Notice of the hearing shall be provided to the State’s Attorney;
4 the youth; the youth’s parent, guardian, or custodian; the Department; and the
5 Department of Corrections.

6 (c) Hearing procedure.

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

12 (2) All youthful offender proceedings shall be confidential.

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

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

20 Sec. 8. 33 V.S.A. § 5286 is amended to read:

21 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

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

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

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

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

1 (2) If the Departments recommend continued supervision of the youthful
2 offender past 18 years of age, the Departments shall report on the services
3 which would be available for the youth.

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

11 (e) If the court finds that it is not in the best interest of the youth to
12 continue the case past 18 years of age, it shall terminate the disposition order,
13 discharge the youth, and dismiss the case in accordance with subsection
14 5287(c) of this title.

15 Sec. 9. 3 V.S.A. § 164 is amended to read:

16 § 164. ADULT COURT DIVERSION PROGRAM

17 (a) The Attorney General shall develop and administer an adult court
18 diversion program in all counties. In consultation with diversion programs, the
19 Attorney General shall adopt a policies and procedures manual in compliance
20 with this section.

21 (b) The program shall be designed for two purposes:

1 (1) To assist adults who have been charged with a first or a second
2 misdemeanor or a first nonviolent felony.

3 (2) To assist adults with substance abuse or mental health treatment
4 needs regardless of the person’s prior criminal history record. Programming
5 for these persons is intended to support access to appropriate treatment or other
6 resources with the aim of improving the person’s health and reducing future
7 adverse involvement in the justice system. A person charged with a felony
8 offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible
9 under this section.

10 (c) The program shall support the operation of diversion programs in local
11 communities through grants of financial assistance to, or contracts for services
12 with, municipalities, private groups, or other local organizations. The Attorney
13 General may require local financial contributions as a condition of receipt of
14 program funding.

15 (d) The Office of the Attorney General shall develop program outcomes
16 following the designated State of Vermont performance accountability
17 framework and, in consultation with the Department of State’s Attorneys and
18 Sheriffs, the Office of the Defender General, the Center for Crime Victim
19 Services, and the Judiciary, report annually on or before December 1 to the
20 General Assembly on services provided and outcome indicators.

1 (e) All adult court diversion programs receiving financial assistance from
2 the Attorney General shall adhere to the following provisions:

3 (1)(A) The diversion program shall accept only persons against whom
4 charges have been filed and the court has found probable cause, but are not yet
5 adjudicated. The prosecuting attorney may refer a person to diversion either
6 before or after arraignment and shall notify in writing the diversion program
7 and the court of his or her intention to refer the person to diversion. The matter
8 shall become confidential when notice is provided to the court. If a person is
9 charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the
10 crime is a misdemeanor, the prosecutor shall provide the person with the
11 opportunity to participate in the court diversion program unless the prosecutor
12 states on the record at arraignment or a subsequent hearing why a referral to
13 the program would not serve the ends of justice. If the prosecuting attorney
14 refers a case to diversion, the prosecuting attorney may release information to
15 the victim upon a showing of legitimate need and subject to an appropriate
16 protective agreement defining the purpose for which the information is being
17 released and in all other respects maintaining the confidentiality of the
18 information; otherwise files held by the court, the prosecuting attorney, and the
19 law enforcement agency related to the charges shall be confidential and shall
20 remain confidential unless:

21 ~~(A)~~(i) the diversion program declines to accept the case;

1 ~~(B)~~(ii) the person declines to participate in diversion;

2 ~~(C)~~(iii) the diversion program accepts the case, but the person does
3 not successfully complete diversion; or

4 ~~(D)~~(iv) the prosecuting attorney recalls the referral to diversion.

5 (B)(i) The prosecuting attorney shall refer to a post-plea adult drug or
6 DUI treatment docket an offender:

7 (I) charged with a new criminal offense or a violation of
8 conditions of a probationary sentence if the offense is an outcome of substance
9 dependence; and

10 (II) screened with a validated instrument by a treatment docket
11 coordinator as having a high prognostic risk and high criminogenic needs.

12 (ii) An offender charged with a crime pursuant to subdivision
13 (1)(B)(i) of this subsection (e) shall be presumed eligible for participation in a
14 treatment docket unless the prosecutor, after consultation with the victim,
15 states on the record why a referral to the program would not serve the ends of
16 justice because:

17 (I) evidence demonstrates that the offender cannot be managed
18 safely or effectively in a treatment docket; or

19 (II) adequate treatment is not available to the offender in the
20 treatment docket's jurisdiction.

1 (iii) Referrals to determine eligibility for a treatment docket may
2 be made by the court, the defense counsel, or the State within 90 days of
3 arraignment, but a person will not be deemed ineligible if a referral is made
4 after 90 days from arraignment.

5 (iv) If an offender is found eligible for a treatment docket pursuant
6 to subdivision (1)(B) of this subsection but a treatment docket is not available
7 in the county of the offense, the court shall consider a motion to transfer venue
8 to a county with a treatment docket.

9 Sec. 10. EFFECTIVE DATE

10 This act shall take effect on passage.