

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 232
3 entitled “An act relating to implementing the expansion of juvenile
4 jurisdiction” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 3 V.S.A. § 164 is amended to read:

8 § 164. ADULT COURT DIVERSION PROJECT

9 (a) The Attorney General shall develop and administer an adult court
10 diversion project in all counties. The project shall be operated through the
11 juvenile diversion project and shall be designed to assist adults who have been
12 charged with a first or second misdemeanor or a first nonviolent felony and
13 individuals who have attained 18 years of age who are charged with an offense
14 in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A. The
15 Attorney General shall adopt only such rules as are necessary to establish an
16 adult court diversion project for ~~adults~~ these individuals in compliance with
17 this section.

18 * * *

1 Sec. 2. 33 V.S.A. § 5103 is amended to read:

2 § 5103. JURISDICTION

3 (a) The Family Division of the Superior Court shall have exclusive
4 jurisdiction over all proceedings concerning a child who is or who is alleged to
5 be a delinquent child or a child in need of care or supervision brought under
6 the authority of the juvenile judicial proceedings chapters, except as otherwise
7 provided in such chapters.

8 (b) Orders issued under the authority of the juvenile judicial proceedings
9 chapters shall take precedence over orders in other Family Division
10 proceedings and any order of another court of this State, to the extent they are
11 inconsistent. This section shall not apply to child support orders in a divorce,
12 parentage, or relief from abuse proceedings until a child support order has been
13 issued in the juvenile proceeding.

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

17 (2)(A) Jurisdiction over a child with a pending delinquency may be
18 extended until six months beyond the child's;

19 (i) 19th birthday if the child was 16 or 17 years of age when he or
20 she committed the offense;

1 (ii) 20th birthday if the child was 18 years of age when he or she
2 committed the offense; or

3 (iii) 21st birthday if the child was 19 years of age when he or she
4 committed the offense.

5 (B) ~~In no case shall~~ Except as provided in section 5279 of this title,
6 custody of a child or youth 18 years of age or older shall not be retained by or
7 transferred to the Commissioner for Children and Families.

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

10 (D) Jurisdiction over a youthful offender shall not extend beyond the
11 youth's 22nd birthday.

12 (d) The court may terminate its jurisdiction over a child prior to the child's
13 18th birthday by order of the court. If the child is not subject to another
14 juvenile proceeding, jurisdiction shall terminate automatically in the following
15 circumstances:

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

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

20 (3) upon the adoption of a child following a termination of parental
21 rights proceeding.

1 Sec. 3. 33 V.S.A. § 5102 is amended to read:

2 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

3 As used in the juvenile judicial proceedings chapters:

4 * * *

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

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

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

13 (ii) an individual who is between 16 and 17.5 years of age, is a
14 child in need of care or supervision as defined in subdivision (3)(C) of this
15 section (beyond parental control), and who is at high risk of serious harm to
16 himself or herself or others due to problems such as substance abuse,
17 prostitution, or homelessness.

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

1 (i) that an individual who is alleged to have committed an act
2 before attaining 10 years of age which would be murder as defined in
3 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency
4 proceedings; and

5 (ii) that an individual may be considered a child for the period of
6 time the court retains jurisdiction under section 5104 of this title.

7 * * *

8 (16)(A) “Legal custody” means the legal status created by order of the
9 court under the authority of the juvenile judicial proceedings chapters for
10 children under 18 years of age ~~which~~ that invests in a party to a juvenile
11 proceeding or another person the following rights and responsibilities:

12 (i) the right to routine daily care and control of the child and to
13 determine where and with whom the child shall live;

14 (ii) the authority to consent to major medical, psychiatric, and
15 surgical treatment for a child;

16 (iii) the responsibility to protect and supervise a child and to
17 provide the child with food, shelter, education, and ordinary medical care; and

18 (iv) the authority to make decisions ~~which~~ that concern the child
19 and are of substantial legal significance, including the authority to consent to
20 civil marriage and enlistment in the U.S. Armed Forces, and the authority to
21 represent the child in legal actions.

1 (B) If legal custody is transferred to a person other than a parent, the
2 rights, duties, and responsibilities so transferred are subject to the residual
3 parental rights of the parents.

4 * * *

5 (30) “Physical custody” means the status created by order of the court
6 under the authority of the juvenile judicial proceedings chapters that invests in
7 the Commissioner the authority to make decisions regarding placements of
8 individuals 18 years of age and older.

9 **Sec. 4. 33 V.S.A. § 5204a is amended to read:**

10 § 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME
11 COMMITTED WHEN DEFENDANT WAS UNDER ~~AGE~~ 18
12 YEARS OF AGE

13 (a) A proceeding may be commenced in the Family Division against a
14 defendant who has attained 18 years of age if:

15 (1) the petition alleges that the defendant:

16 (A) before attaining 18 years of age, violated a crime listed in
17 subsection 5204(a) of this title; ~~or~~

18 (B) after attaining 14 years of age but before attaining 18 years of
19 age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in
20 subsection 5204(a) of this title; or

1 (C) after attaining 17 years of age but before attaining 18 years of
2 age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection
3 5204(a) of this title, as long as the petition is filed prior to the defendant’s 19th
4 birthday;

5 (2) a juvenile petition was never filed based upon the alleged conduct;
6 and

7 (3) the statute of limitations has not tolled on the crime which the
8 defendant is alleged to have committed.

9 (b)(1) The Family Division shall, except as provided in subdivision (2) of
10 this subsection, transfer a petition filed pursuant to subdivision (a)(1)(A) of
11 this section to the Criminal Division if the Family Division finds that:

12 (A) there is probable cause to believe that while the defendant was
13 less than 18 years of age he or she committed an act listed in subsection
14 5204(a) of this title;

15 (B) there was good cause for not filing a delinquency petition in the
16 Family Division when the defendant was less than 18 years of age;

17 (C) there has not been an unreasonable delay in filing the petition;
18 and

19 (D) transfer would be in the interest of justice and public safety.

20 (2)(A) If a petition has been filed pursuant to subdivision (a)(1)(A) of
21 this section, the Family Division may order that the defendant be treated as a

1 youthful offender consistent with the applicable provisions of chapter 52A of
2 this title if the defendant is under 23 years of age and the Family Division:

3 (i) makes the findings required by subdivisions (1)(A), (B), and
4 (C) of this subsection;

5 (ii) finds that the youth is amenable to treatment or rehabilitation
6 as a youthful offender; and

7 (iii) finds that there are sufficient services in the Family Division
8 system and the Department for Children and Families or the Department of
9 Corrections to meet the youth's treatment and rehabilitation needs.

10 (B) If the Family Division orders that the defendant be treated as a
11 youthful offender, the court shall approve a disposition case plan and impose
12 conditions of probation on the defendant.

13 (C) If the Family Division finds after hearing that the defendant has
14 violated the terms of his or her probation, the Family Division may:

15 (i) maintain the defendant's status as a youthful offender, with
16 modified conditions of probation if the court deems it appropriate; or

17 (ii) revoke the defendant's youthful offender status and transfer
18 the petition to the Criminal Division pursuant to subdivision (1) of this
19 subsection.

20 (3) The Family Division shall in all respects treat a petition filed
21 pursuant to subdivision (a)(1)(B) of this section in the same manner as a

1 petition filed pursuant to section 5201 of this title, except that the Family
2 Division's jurisdiction shall end on or before the defendant's 22nd birthday, if
3 the Family Division:

4 (A) finds that there is probable cause to believe that, after attaining
5 14 years of age but before attaining 18 years of age, the defendant committed
6 an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of
7 this title; and

8 (B) makes the findings required by subdivisions (b)(1)(B) and (C) of
9 this section.

10 (4) In making the determination required by subdivision (1)(D) of this
11 subsection, the court may consider, among other matters:

12 (A) the maturity of the defendant as determined by consideration of
13 his or her age; home; environment; emotional, psychological, and physical
14 maturity; and relationship with and adjustment to school and the community;

15 (B) the extent and nature of the defendant's prior criminal record and
16 record of delinquency;

17 (C) the nature of past treatment efforts and the nature of the
18 defendant's response to them;

19 (D) whether the alleged offense was committed in an aggressive,
20 violent, premeditated, or willful manner;

1 (E) the nature of any personal injuries resulting from or intended to
2 be caused by the alleged act;

3 (F) whether the protection of the community would be best served by
4 transferring jurisdiction from the Family Division to the Criminal Division of
5 the Superior Court.

6 (c) If the Family Division does not transfer a petition filed pursuant to
7 subdivision (a)(1)(A) of this section to the Criminal Division or order that the
8 defendant be treated as a youthful offender pursuant to subsection (b) of this
9 section, the petition shall be dismissed.

10 (d)(1) The Family Division shall treat a petition filed pursuant to
11 subdivision (a)(1)(C) of this section in all respects in the same manner as a
12 petition filed pursuant to section 5201 of this title if the court:

13 (A) finds that there is probable cause to believe that, after attaining
14 17 years of age but before attaining 18 years of age, the defendant committed
15 an offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title;
16 and

17 (B) makes the findings required by subdivisions (b)(1)(B) and (C) of
18 this section.

19 (2) The Family Division’s jurisdiction over cases filed pursuant to
20 subdivision (a)(1)(C) of this section shall end on or before the defendant’s 20th
21 birthday.

1 Sec. 5. 33 V.S.A. § 5206 is amended to read:

2 § 5206. CITATION OF 16- ~~AND 17- YEAR OLDS~~ TO 18-YEAR-OLDS

3 (a)(1) If a child was over 16 years of age and under ~~18~~ 19 years of age at
4 the time the offense was alleged to have been committed and the offense is not
5 specified in subsection (b) of this section, law enforcement shall cite the child
6 to the Family Division of the Superior Court.

7 (2) If, after the child is cited to the Family Division, the State's Attorney
8 chooses to file the charge in the Criminal Division of the Superior Court, the
9 State's Attorney shall state in the information the reason why filing in the
10 Criminal Division is in the interest of justice.

11 (b) Offenses for which a law enforcement officer is not required to cite a
12 child to the Family Division of the Superior Court shall include:

13 (1) 23 V.S.A. §§ 674 (driving while license suspended or revoked);
14 1128 (accidents-duty to stop); and 1133 (eluding a police officer).

15 (2) Fish and wildlife offenses that are not minor violations as defined by
16 10 V.S.A. § 4572.

17 (3) ~~A listed crime as defined in 13 V.S.A. § 5301.~~

18 (4) An offense listed in subsection 5204(a) of this title.

1 Sec. 6. 33 V.S.A. § 5279 is added to read:

2 § 5279. PHYSICAL CUSTODY OF INDIVIDUALS 18 YEARS OF AGE

3 AND OLDER

4 The court shall order physical custody of an individual 18 years of age or
5 older to the Commissioner for Children and Families if it finds that the
6 individual presents a risk of harm to himself or herself or others and ordering
7 physical custody to the Commissioner will protect the welfare and safety of the
8 individual or the safety of the community. Upon such a finding, the court may
9 issue such temporary orders related to physical custody of the individual as it
10 deems necessary and sufficient to protect the welfare and safety of the
11 individual and the community.

12 Sec. 7. 33 V.S.A. § 5280 is amended to read:

13 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

14 PROCEEDINGS IN THE FAMILY DIVISION

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

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

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

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

19 (b) A State's Attorney may commence a proceeding in the Family Division

20 of the Superior Court concerning a child who is alleged to have committed an

1 offense after attaining 14 years of age but not 22 years of age that could
2 otherwise be filed in the Criminal Division.

3 (c) If a State’s Attorney files a petition under subdivision (a)(1) of this
4 section, the case shall proceed as provided under subsection 5281(b) of this
5 title.

6 (d) Within 15 days after the commencement of a youthful offender
7 proceeding pursuant to subsection (a) of this section, the youth shall be offered
8 a risk and needs screening, which shall be conducted by the Department or by
9 a community provider that has contracted with the Department to provide risk
10 and needs screenings. The risk and needs screening shall be completed prior to
11 the youthful offender status hearing held pursuant to section 5283 of this title.
12 Unless the court extends the period for the risk and needs screening for good
13 cause shown, the Family Division shall reject the case for youthful offender
14 treatment if the youth does not complete the risk and needs screening within
15 15 days of the offer for the risk and needs screening.

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

20 (2) Information related to the present alleged offense directly or
21 indirectly derived from the risk and needs screening or other conversation with

1 the Department or community-based provider shall not be used against the
2 youth in the youth's criminal or juvenile case for any purpose, including
3 impeachment or cross-examination. However, the fact of participation in risk
4 and needs screening may be used in subsequent proceedings.

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

15 Sec. 8. 33 V.S.A. § 5287 is amended to read:

16 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

17 (a) ~~A motion may be filed at any time in the Family Division requesting~~
18 ~~that the court~~ The Family Division may, at any time, terminate the youth's
19 status as a youthful offender and discharge him or her from probation. ~~The~~
20 ~~motion may be filed by the State's Attorney, the youth, the Department, or the~~
21 ~~court on its own motion. The court shall set the motion for hearing and provide~~

1 ~~notice and an opportunity to be heard at the hearing to the State's Attorney, the~~
2 ~~youth, the Department for Children and Families and the Department of~~
3 ~~Corrections.~~

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

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

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

9 (3) reports of treatment personnel; and

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

11 (c) If the court finds that the youth has successfully completed the terms of
12 the probation order, it shall terminate youthful offender status, discharge the
13 youth from probation, and file a written order dismissing the Family Division
14 case. The Family Division shall provide notice of the dismissal to the Criminal
15 Division, which shall dismiss the criminal case.

16 (d) Upon discharge and dismissal under subsection (c) of this section, all
17 records relating to the case in the Criminal Division shall be expunged, and all
18 records relating to the case in the Family Court shall be sealed pursuant to
19 section 5119 of this title.

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

1 Sec. 9. 33 V.S.A. subchapter 6 is amended to read:

2 Subchapter 6. Placement of ~~Minors~~ in Secure Facilities

3 § 5291. DETENTION OR TREATMENT OF ~~MINORS~~ INDIVIDUALS

4 CHARGED AS DELINQUENTS IN SECURE FACILITIES FOR

5 THE DETENTION OR TREATMENT OF DELINQUENT

6 CHILDREN

7 (a) Prior to disposition, the court shall have the sole authority to place a
8 child who is in the custody of the Department in a secure facility used for the
9 detention or treatment of delinquent children until the Commissioner
10 determines that a suitable placement is available for the child. The court shall
11 not order placement in a secure facility without a recommendation from the
12 Department that placement in a secure facility is necessary. The court order
13 shall include a finding that no other suitable placement is available and the
14 child presents a risk of injury to himself or herself, to others, or to property.

15 * * *

16 **Sec. 10. 28 V.S.A. § 1101 is amended to read:**

17 § 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER

18 REGARDING JUVENILE SERVICES

19 The Commissioner is charged with the following powers and

20 responsibilities regarding the administration of juvenile services:

1 **Sec. 12. REDUCTION IN FORCE OF WOODSIDE JUVENILE**

2 **REHABILITATION CENTER EMPLOYEES**

3 The State of Vermont and the collective bargaining representative of the
4 employees employed at the Woodside Juvenile Rehabilitation Center facility
5 on July 1, 2020 shall engage in bargaining regarding whether and how to
6 modify any terms of the applicable collective bargaining agreement in relation
7 to permanent status classified employees who are subject to a reduction in
8 force from their positions at the Woodside Juvenile Rehabilitation Center
9 facility on or after [DATE].

10 **Sec. 13. POPULATION FUNDING COMMITMENT; AGENCY OF**
11 **HUMAN SERVICES; WOODSIDE JUVENILE REHABILITATION**
12 **CENTER**

13 (a) The Fiscal Year 2021 budget as proposed by the Administration:

14 (1) anticipates closure of the secure Woodside Juvenile Rehabilitation
15 Center facility that provides short and long-term placements and treatment
16 services for justice-involved youth and youth in the custody of the Department
17 for Children and Families; and

18 (2) allocates in FY21 a total of \$2,500,000.00 in General Funds and any
19 Federal Medicaid matching funds to serve this population in alternative
20 placements approved by the Department for Children and Families.

1 (b) It is the intent of the General Assembly that the Woodside Juvenile
2 Rehabilitation Center facility remain open until the Agency of Human Services
3 receives approval from both the Joint Fiscal Committee and the Joint
4 Legislative Justice Oversight Committee to close the facility. The Committees
5 shall grant approval for the closure of Woodside upon determining that the
6 Agency has a plan to adequately fund alternative programs and placements for
7 youth served by Woodside, including those programs and placements that
8 currently accept youth that could have been served by Woodside under its
9 2018 admissions policy.

10 **Sec. 14. AGENCY OF HUMAN SERVICES; PLAN FOR YOUTH WITH**
11 **MENTAL HEALTH DISORDERS; PLAN FOR INCARCERATED YOUTH**

12 (a) During the 2020 legislative interim, the Agency of Human Services
13 shall develop a plan to:

14 (1) provide comprehensive mental health treatment services to youth,
15 including justice-involved youth, with severe mental health disorders; and

16 (2) provide placements for youth under 18 years of age who are
17 incarcerated in Department of Corrections facilities or placed at Woodside
18 Juvenile Rehabilitation Center

19 (b) On or before January 15, 2021, the Agency shall report to the House
20 and Senate Committees on Judiciary, the House Human Services Committee,
21 and the Senate Committee on Health and Welfare on its plans pursuant to this

1 subsection and recommendations for repurposing of the Woodside facility to
2 be used as a placement for incarcerated youth under 22 years of age.

3 Sec. 15. EFFECTIVE DATE

4 This act shall take effect on July 1, 2020.

5

6

7 (Committee vote: _____)

8

9

Senator _____

10

FOR THE COMMITTEE