

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

19
20

H.142

Introduced by Representatives Small of Winooski, Christie of Hartford,
Rachelson of Burlington, Bos-Lun of Westminster, Brumsted of
Shelburne, Cina of Burlington, Garofano of Essex, Gregoire of
Fairfield, Headrick of Burlington, Hyman of South Burlington,
Logan of Burlington, McGill of Bridport, Mulvaney-Stanak of
Burlington, Nicoll of Ludlow, Pajala of Londonderry,
Surprenant of Barnard, and Whitman of Bennington

Referred to Committee on

Date:

Subject: Delinquency proceedings; jurisdiction; placement in facilities

Statement of purpose of bill as introduced: This bill proposes to (1) increase
the minimum age at which a child may be subject to juvenile delinquency
proceedings from 10 to 12; (2) prohibit the use of solitary confinement and
corporal punishment on children placed in secure facilities; and (3) require that
when a defendant who is under 18 years of age is sentenced for a crime, the
court must consider whether the child was subjected to any early childhood
trauma or adverse childhood experiences as potential mitigating factors.

An act relating to juvenile delinquency and criminal proceedings involving
children

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

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

3 § 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

4 As used in the juvenile judicial proceedings chapters:

5 * * *

6 (2) "Child" means any of the following:

7 * * *

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

12 ~~(i) that an individual who is alleged to have committed an act~~
13 ~~before attaining 10 years of age that would be murder as defined in 13 V.S.A.~~
14 ~~§ 2301 if committed by an adult may be subject to delinquency proceedings;~~
15 ~~and~~

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

18 * * *

19 Sec. 2. 33 V.S.A. § 5295 is added to read:

20 § 5295. PROHIBITION ON SOLITARY CONFINEMENT FOR CHILDREN

1 (a) No solitary or room confinement shall be used on any child for
2 discipline, punishment, retaliation, or any other reason other than as a
3 temporary response to behavior of a child that poses a serious and immediate
4 risk of physical harm to the child or any other person.

5 (b) A staff member of a facility shall attempt to use less restrictive
6 techniques before placing a child in solitary or room confinement. The
7 techniques shall include:

8 (1) attempting to de-escalate the situation by talking with the child; and

9 (2) permitting a qualified mental health professional to talk with the
10 child.

11 (c) After attempting to use less restrictive techniques as required by
12 subsection (b) of this section, a staff member of a facility may place a child in
13 temporary room confinement if the staff member:

14 (1) determines that the child's behavior poses a serious and immediate
15 risk of physical harm to the child or another person;

16 (2) explains to the child the reasons for the room confinement; and

17 (3) informs the child that release from room confinement will occur:

18 (A) immediately when the child regains self-control such that the
19 child's behavior no longer poses a serious and immediate risk of physical harm
20 to the child or another person; and

1 (B) not later than the time periods specified in subdivision (d)(2) of
2 this section.

3 (d) If a child is placed in temporary room confinement pursuant to
4 subsection (c) of this section, the child shall be released:

5 (1) immediately when the child's regains self-control such that the
6 child's behavior no longer poses a serious and immediate risk of physical harm
7 to the child or another person; or

8 (2) if the child does not regain self-control as described in subdivision
9 (1) of this subsection:

10 (A) not more than three hours after being placed in room
11 confinement if the child's behavior poses a serious risk of physical harm to
12 others; or

13 (B) not more than 30 minutes after being placed in room confinement
14 if the child's behavior poses a serious risk of physical harm to the child.

15 (e) Staff at the facility shall check on a child at least once every 15 minutes
16 while the child is in room confinement.

17 (f) If the child's behavior continues to pose a serious and immediate risk of
18 physical harm to the child or another person after the expiration of the time
19 periods specified in subdivision (d)(2) of this section, the child shall be
20 transferred to another facility or location where services other than room
21 confinement can be provided to the child.

1 Sec. 3. 33 V.S.A. § 5296 is added to read:

2 § 5296. PUNISHMENT; RESTRICTIONS

3 No cruel, inhuman, or corporal punishment shall be used on any child, and
4 the use of force on any child shall not be justifiable except as provided by law.

5 Sec. 4. 13 V.S.A. § 7046 is added to read:

6 § 7046. SENTENCING A PERSON UNDER 18 YEARS OF AGE;

7 MITIGATING FACTORS

8 (a) In sentencing a person who was under 18 years of age at the time of the
9 commission of the crime, the court shall consider the diminished culpability of
10 children relative to adults and whether the child was subjected to any early
11 childhood trauma or adverse childhood experiences.

12 (b) After consideration of the mitigating circumstances as provided in
13 subsection (a) of this section, the court may deviate from any mandatory
14 minimum sentence or penalty enhancement otherwise required by law.

15 Sec. 5. EFFECTIVE DATE

16 This act shall take effect on passage.