

1 H.751

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Human services; delinquency proceedings

5 Statement of purpose: This bill proposes to extend the jurisdiction of the
6 family division of the superior court to a person under 21 who is adjudicated
7 delinquent, to permit a state's attorney to file a motion to transfer certain
8 delinquency proceedings from juvenile court to the criminal division of the
9 superior court if the child is 16 or 17 years of age, and to permit waiver of the
10 disposition case plan if the juvenile enters an admission.

11 An act relating to jurisdiction of delinquency proceedings

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

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

14 § 5103. JURISDICTION

15 (a) The family division of the superior court shall have exclusive
16 jurisdiction over all proceedings concerning a child who is or who is alleged to
17 be a delinquent child or a child in need of care or supervision brought under
18 the authority of the juvenile judicial proceedings chapters, except as otherwise
19 provided in such chapters.

1 (b) Orders issued under the authority of the juvenile judicial proceedings
2 chapters shall take precedence over orders in other family division proceedings
3 and any order of another court of this state, to the extent they are inconsistent.
4 This section shall not apply to child support orders in a divorce, parentage, or
5 relief from abuse proceedings until a child support order has been issued in the
6 juvenile proceeding.

7 (c) Except as otherwise provided by this title, jurisdiction over a child
8 adjudicated delinquent shall not be extended beyond the child's ~~18th~~ 21st
9 birthday. Jurisdiction over a child in need of care or supervision shall not be
10 extended beyond the child's 18th birthday.

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

15 (1) Upon the discharge of a child from juvenile probation, providing the
16 child is not in the legal custody of the commissioner.

17 (2) Upon an order of the court transferring legal custody to a parent,
18 guardian, or custodian without conditions or protective supervision.

19 (3) Upon the adoption of a child following a termination of parental
20 rights proceeding.

1 Sec. 2. 33 V.S.A. § 5201 is amended to read:

2 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

3 * * *

4 (c) Consistent with applicable provisions of Title 4, any proceeding
5 concerning a child who is alleged to have committed an act specified in
6 ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title after attaining the age of
7 14, but not the age of 18, shall originate in district or superior court, provided
8 that jurisdiction may be transferred in accordance with this chapter.

9 * * *

10 Sec. 3. 33 V.S.A. § 5203 is amended to read:

11 § 5203. TRANSFER FROM OTHER COURTS

12 (a) If it appears to a criminal division of the superior court that the
13 defendant was under the age of 16 years at the time the offense charged was
14 alleged to have been committed and the offense charged is not one of those
15 specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, that court
16 shall forthwith transfer the case to the juvenile court under the authority of this
17 chapter.

18 (b) If it appears to a criminal division of the superior court that the
19 defendant was over the age of 16 years and under the age of 18 years at the
20 time the offense charged was alleged to have been committed, or that the
21 defendant had attained the age of 14 but not the age of 16 at the time an

1 offense specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title was
2 alleged to have been committed, that court may forthwith transfer the
3 proceeding to the juvenile court under the authority of this chapter, and the
4 minor shall thereupon be considered to be subject to this chapter as a child
5 charged with a delinquent act.

6 (c) If it appears to the state's attorney that the defendant was over the age
7 of 16 and under the age of 18 at the time the offense charged was alleged to
8 have been committed and the offense charged is not an offense specified in
9 ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, the state's attorney may
10 file charges in a juvenile court or the criminal division of the superior court. If
11 charges in such a matter are filed in the criminal division of the superior court,
12 the criminal division of the superior court may forthwith transfer the
13 proceeding to the juvenile court under the authority of this chapter, and the
14 person shall thereupon be considered to be subject to this chapter as a child
15 charged with a delinquent act.

16 * * *

17 Sec. 4. 33 V.S.A. § 5204 is amended to read:

18 § 5204. TRANSFER FROM JUVENILE COURT

19 (a) After a petition has been filed alleging delinquency, upon motion of the
20 state's attorney and after hearing, the juvenile court may transfer jurisdiction of
21 the proceeding to the criminal division of the superior court, if:

1 (1) the child had attained the age of 10 but not the age of 14 at the time
2 the act was alleged to have occurred, and if the delinquent act set forth in the
3 petition was any of the following:

4 ~~(1)~~(A) arson causing death as defined in 13 V.S.A. § 501;

5 ~~(2)~~(B) assault and robbery with a dangerous weapon as defined in
6 13 V.S.A. § 608(b);

7 ~~(3)~~(C) assault and robbery causing bodily injury as defined in
8 13 V.S.A. § 608(c);

9 ~~(4)~~(D) aggravated assault as defined in 13 V.S.A. § 1024;

10 ~~(5)~~(E) murder as defined in 13 V.S.A. § 2301;

11 ~~(6)~~(F) manslaughter as defined in 13 V.S.A. § 2304;

12 ~~(7)~~(G) kidnapping as defined in 13 V.S.A. § 2405;

13 ~~(8)~~(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

14 ~~(9)~~(I) maiming as defined in 13 V.S.A. § 2701;

15 ~~(10)~~(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

16 ~~(11)~~(K) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

17 ~~(12)~~(L) burglary into an occupied dwelling as defined in 13 V.S.A.
18 § 1201(c); or

19 (2) the child had attained the age of 16 but not the age of 18 at the time
20 the act was alleged to have occurred and the delinquent act set forth in the
21 petition was not one of those specified in subdivision (1) of this subsection.

1 (b) The state's attorney of the county where the juvenile petition is pending
2 may move in the juvenile court for an order transferring jurisdiction under
3 subsection (a) of this section within 10 days of the filing of the petition
4 alleging delinquency. The filing of the motion to transfer jurisdiction shall
5 automatically stay the time for the hearing provided for in section 5225 of this
6 title, which stay shall remain in effect until such time as the juvenile court may
7 deny the motion to transfer jurisdiction.

8 (c) Upon the filing of a motion to transfer jurisdiction under subsection (b)
9 of this section, the juvenile court shall conduct a hearing in accordance with
10 procedures specified in subchapter 2 of this chapter to determine whether:

11 (1) there is probable cause to believe that the child committed an act
12 listed in subsection (a) of this section; and

13 (2) public safety and the interests of the community would not be served
14 by treatment of the child under the provisions of law relating to juvenile courts
15 and delinquent children.

16 (d) In making its determination as required under subsection (c) of this
17 section, the court may consider, among other matters:

18 (1) The maturity of the child as determined by consideration of his or
19 her age, home, environment; emotional, psychological and physical maturity;
20 and relationship with and adjustment to school and the community.

21 (2) The extent and nature of the child's prior record of delinquency.

1 (3) The nature of past treatment efforts and the nature of the child's
2 response to them.

3 (4) Whether the alleged offense was committed in an aggressive,
4 violent, premeditated, or willful manner.

5 (5) The nature of any personal injuries resulting from or intended to be
6 caused by the alleged act.

7 (6) The prospects for rehabilitation of the child by use of procedures,
8 services, and facilities available through juvenile proceedings.

9 (7) Whether the protection of the community would be better served by
10 transferring jurisdiction from the juvenile court to the criminal division of the
11 superior court.

12 (e) A transfer under this section shall terminate the jurisdiction of the
13 juvenile court over the child only with respect to those delinquent acts alleged
14 in the petition with respect to which transfer was sought.

15 (f) The juvenile court, following completion of the transfer hearing, shall
16 make written findings and, if the court orders transfer of jurisdiction from the
17 juvenile court, shall state the reasons for that order. If the juvenile court orders
18 transfer of jurisdiction, the child shall be treated as an adult. The state's
19 attorney shall commence criminal proceedings as in cases commenced against
20 adults.

1 (g) The order granting or denying transfer of jurisdiction shall not
2 constitute a final judgment or order within the meaning of Rules 3 and 4 of the
3 Vermont Rules of Appellate Procedure.

4 (h) If a person who has not attained the age of 16 at the time of the alleged
5 offense has been prosecuted as an adult and is not convicted of one of the acts
6 listed in subsection (a) of this section but is convicted only of one or more
7 lesser offenses, jurisdiction shall be transferred to the juvenile court for
8 disposition. A conviction under this subsection shall be considered an
9 adjudication of delinquency and not a conviction of crime, and the entire
10 matter shall be treated as if it had remained in juvenile court throughout. In
11 case of an acquittal for a matter specified in this subsection and in case of a
12 transfer to juvenile court under this subsection, the court shall order the sealing
13 of all applicable files and records of the court, and such order shall be carried
14 out as provided in subsection 5119(e) of this title.

15 (i) The record of a hearing conducted under subsection (c) of this section
16 and any related files shall be open to inspection only by persons specified in
17 subsections 5117(b) and (c) of this title in accordance with section 5119 of this
18 title and by the attorney for the child.

1 Sec. 5. 33 V.S.A. § 5225 is amended to read:

2 § 5225. PRELIMINARY HEARING

3 (a) A preliminary hearing shall be held at the time and date specified on the
4 citation or as otherwise ordered by the court. If a child is taken into custody
5 prior to the preliminary hearing, the preliminary hearing shall be at the time of
6 the temporary care hearing.

7 (b) Counsel for the child shall be assigned prior to the preliminary hearing.

8 (c) At the preliminary hearing, the court shall appoint a guardian ad litem
9 for the child. The guardian ad litem may be the child's parent, guardian, or
10 custodian. On its own motion or motion by the child's attorney, the court may
11 appoint a guardian ad litem other than a parent, guardian or custodian.

12 (d) At the preliminary hearing, a denial shall be entered to the allegations
13 of the petition, unless the juvenile, after adequate consultation with the
14 guardian ad litem and counsel, enters an admission. If the juvenile enters an
15 admission, the disposition case plan required by section 5230 of this title may
16 be waived and the court may proceed directly to disposition, provided that the
17 juvenile, the custodial parent, the state's attorney, the guardian ad litem, and
18 the department agree.

19 (e) The court may order the child to abide by conditions of release pending
20 a merits or disposition hearing.

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2012.