

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.

*Sec. 1. INTENT*

*The general assembly intends this act to enhance opportunities to treat youths as juveniles in the family division of the superior court while preserving the discretion of state's attorneys to bring criminal charges against youths in appropriate cases. Evidence-based practice and research clearly indicate that young people charged as juveniles are much more likely to receive the services necessary for their rehabilitation and are much less likely to reoffend, resulting in fewer corrections expenses for the state and more opportunities for the offender to change his or her behavior. This act therefore contains several measures designed to facilitate the filing of juvenile proceedings against some minors in the family division while retaining the discretion of state's attorneys to charge other minors as adults in the criminal division when the facts warrant it. By promoting the treatment of youths as juveniles in the family division rather than as adults in criminal court, the general assembly intends this act to help establish a more effective way to reduce recidivism and its attendant budgetary and societal costs.*

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

*§ 5103. JURISDICTION*

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

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

*(c) Except as otherwise provided by this title, jurisdiction over a child who has been adjudicated delinquent shall not be extended beyond the child's 18th 20th birthday, provided that in no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and families. Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.*

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

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

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

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

*Sec. 3. 33 V.S.A. § 5201 is amended to read:*

*§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS*

*\* \* \**

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

*\* \* \**

*Sec. 4. 33 V.S.A. § 5203 is amended to read:*

*§ 5203. TRANSFER FROM OTHER COURTS*

*(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those*

*specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, that court shall forthwith transfer the case to the ~~juvenile~~ family division of the superior court under the authority of this chapter.*

*(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.*

*(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, the state's attorney may file charges in ~~a juvenile court or~~ the family or criminal division of the superior court. If charges in such a matter are filed in the criminal division of the superior court, the criminal division of the superior court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the person shall thereupon be*

*considered to be subject to this chapter as a child charged with a delinquent act.*

\* \* \*

*Sec. 5. 33 V.S.A. § 5204 is amended to read:*

*§ 5204. TRANSFER FROM JUVENILE COURT*

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(12)(L)~~ burglary into an occupied dwelling as defined in 13 V.S.A.

§ 1201(c); or

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

(b) The state's attorney of the county where the juvenile petition is pending may move in the ~~juvenile~~ family division of the superior court for an order transferring jurisdiction under subsection (a) of this section ~~within 10 days of the filing of the petition alleging delinquency~~ at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

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

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

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

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

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

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

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

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

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

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



*(7) Whether the protection of the community would be better served by transferring jurisdiction from the ~~juvenile court~~ family division to the criminal division of the superior court.*

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

*(f)(1) The ~~juvenile court~~ family division, following completion of the transfer hearing, shall make ~~written~~ findings and, if the court orders transfer of jurisdiction from the ~~juvenile court~~ family division, shall state the reasons for that order. If the ~~juvenile court~~ family division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.*

*(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the family division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the criminal division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.*

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

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

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

*Sec. 6. 33 V.S.A. § 5225 is amended to read:*

*§ 5225. PRELIMINARY HEARING*

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

*(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the department or by a community provider that has contracted with the department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the department or the community provider shall report the risk level result of the screening to the state's attorney. If a charge is brought in the family division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the court until after a merits finding has been made.*

*(c) Counsel for the child shall be assigned prior to the preliminary hearing.*

*~~(e)~~(d) At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent, guardian or custodian.*

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

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

*Sec. 7. 33 V.S.A. § 5232 is amended to read:*

*§ 5232. DISPOSITION ORDER*

*\* \* \**

*(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:*

*\* \* \**

*(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case, or if the child fails to complete the program*

in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

\* \* \*

*Sec. 8. REPORT*

On or before December 1, 2013, the court administrator, in collaboration with the department for children and families and the court diversion director, shall report statistics evidencing the result of this act to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare. The report shall identify:

(1) the number of youths 16 years of age or older on juvenile probation;

(2) the number of filings involving 16- and 17-year-olds in the family and criminal divisions of the superior court;

(3) the number of 16- and 17-year-olds referred to the diversion program;

(4) the number of violations of probation filed in the family division for person 18 years of age or older;

(5) the number of 16- and 17-year-olds referred directly to community providers at disposition hearings in the family division; and

(6) the number of persons 16 years of age or older returned to the family division after the effective date of this act as a result of either nonacceptance by a community-based provider or failure to complete either

*the diversion program or a program administered by a community-based provider.*

*Sec. 9. EFFECTIVE DATE*

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