

1 S.58

2 Introduced by Senators Sears, Campbell and Illuzzi

3 Referred to Committee on Judiciary

4 Date: February 11, 2011

5 Subject: Delinquency; transfer from other courts

6 Statement of purpose: This bill proposes to permit an adult defendant to be
7 charged in the criminal division of the superior court for a serious crime that
8 the defendant is accused of committing when the defendant was under the age
9 of 16.

10 An act relating to jurisdiction of a crime committed when the defendant was
11 under the age of 16

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

13 ~~Sec. 1. 33 V.S.A. § 5204a is added to read:~~

14 ~~§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME~~

15 ~~COMMITTED WHEN DEFENDANT WAS UNDER AGE 16~~

16 ~~In any instance in which the statute of limitations has not tolled on a crime~~
17 ~~listed in 33 V.S.A. § 5204(a) and a juvenile petition never has been filed based~~
18 ~~upon acts committed before a defendant has attained the age of 16, the state~~
19 ~~may commence a proceeding against the defendant in the criminal division of~~
20 ~~the superior court after the defendant has attained the age of 18.~~

1 ~~Sec. 2. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2011.~~

Sec. 1. PURPOSE

The general assembly intends this act to clarify the authority of the state to institute criminal proceedings against an adult who committed a crime while a minor. Juvenile judicial proceedings are intended, among other things, to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assures balanced attention to the protection of the community, accountability to victims and the community for offenses, and the development of competencies to enable children to become responsible and productive members of the community. However, the general assembly never intended the juvenile procedures statutes to be used to permit a person who commits a crime to escape the consequences of that behavior simply by turning 18 before the state has filed charges against the person. This act clarifies, as the general assembly had always intended, that under the proper circumstances and for serious offenses, the state may bring charges against a person 18 years of age or older who committed a crime before turning 18.

Sec. 2. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME COMMITTED WHEN DEFENDANT WAS UNDER AGE 18

(a) A proceeding may be commenced in the family division against a defendant who has attained the age of 18 if:

(1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;

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

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

(b)(1) The family division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the criminal division if the family division finds that:

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

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

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

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

(2)(A) The family division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age and the family division:

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

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

(iii) finds that there are sufficient services in the family division system and the department for children and families or the department of corrections to meet the youth's treatment and rehabilitation needs.

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

(C) If the family division finds after hearing that the defendant has violated the terms of his or her probation, the family division may:

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

(ii) revoke the defendant's youthful offender status and transfer the petition to the criminal division pursuant to subdivision (1) of this subsection.

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

(A) The maturity of the defendant 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.

(B) The extent and nature of the defendant's prior criminal record and record of delinquency.

(C) The nature of past treatment efforts and the nature of the defendant's response to them.

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

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

(F) Whether the protection of the community would be best served by transferring jurisdiction from the family division to the criminal division of the superior court.

(c) If the family division does not transfer the case to the criminal division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

Sec. 3. 33 V.S.A. § 5119(g) is amended to read:

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime ~~committed~~ under the laws of this state which the person committed prior to attaining the age of ~~majority~~ 21, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

Sec. ~~3~~4. EFFECTIVE DATE

This act shall take effect on passage.