

1 S.232

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; youthful offender; juvenile delinquency

6 Statement of purpose of bill as introduced: This bill proposes to make
7 clarifying changes to the youthful offender and juvenile delinquency statutes to
8 implement the expansion of juvenile jurisdiction to 18- and 19-year-olds.

9 An act relating to implementing the expansion of juvenile jurisdiction

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

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

12 § 164. ADULT COURT DIVERSION PROJECT

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

1 adult court diversion project for ~~adults~~ these individuals in compliance with
2 this section.

3 * * *

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

5 § 5103. JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

1 becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of
2 this title; provided, however:

3 (i) that an individual who is alleged to have committed an act
4 before attaining 10 years of age which would be murder as defined in
5 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency
6 proceedings; and

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

9 * * *

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

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

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

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

20 (iv) the authority to make decisions ~~which~~ that concern the child
21 and are of substantial legal significance, including the authority to consent to

1 civil marriage and enlistment in the U.S. Armed Forces, and the authority to
2 represent the child in legal actions.

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

6 * * *

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

11 Sec. 4. 33 V.S.A. § 5206 is amended to read:

12 § 5206. CITATION OF 16- ~~AND 17- YEAR OLDS~~ TO 18-YEAR-OLDS

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

17 (2) If, after the child is cited to the Family Division, the State’s Attorney
18 chooses to file the charge in the Criminal Division of the Superior Court, the
19 State’s Attorney shall state in the information the reason why filing in the
20 Criminal Division is in the interest of justice.

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

3 (1) 23 V.S.A. §§ 674 (driving while license suspended or revoked);
4 1128 (accidents-duty to stop); and 1133 (eluding a police officer).

5 (2) Fish and wildlife offenses that are not minor violations as defined by
6 10 V.S.A. § 4572.

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

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

9 Sec. 5. 33 V.S.A. § 5279 is added to read:

10 § 5279. PHYSICAL CUSTODY OF INDIVIDUALS 18 YEARS OF AGE

11 AND OLDER

12 The court shall order physical custody of an individual 18 years of age or
13 older to the Commissioner for Children and Families if it finds that the
14 individual presents a risk of harm to himself or herself or others and ordering
15 physical custody to the Commissioner will protect the welfare and safety of the
16 individual or the safety of the community. Upon such a finding, the court may
17 issue such temporary orders related to physical custody of the individual as it
18 deems necessary and sufficient to protect the welfare and safety of the
19 individual and the community.

1 Sec. 6. 33 V.S.A. § 5280 is amended to read:

2 § 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

3 PROCEEDINGS IN THE FAMILY DIVISION

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

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

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

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

8 (b) A State's Attorney may commence a proceeding in the Family Division
9 of the Superior Court concerning a child who is alleged to have committed an
10 offense after attaining 14 years of age but not 22 years of age that could
11 otherwise be filed in the Criminal Division.

12 (c) If a State's Attorney files a petition under subdivision (a)(1) of this
13 section, the case shall proceed as provided under subsection 5281(b) of this
14 title.

15 (d) Within 15 days after the commencement of a youthful offender
16 proceeding pursuant to subsection (a) of this section, the youth shall be offered
17 a risk and needs screening, which shall be conducted by the Department or by
18 a community provider that has contracted with the Department to provide risk
19 and needs screenings. The risk and needs screening shall be completed prior to
20 the youthful offender status hearing held pursuant to section 5283 of this title.
21 Unless the court extends the period for the risk and needs screening for good

1 cause shown, the Family Division shall reject the case for youthful offender
2 treatment if the youth does not complete the risk and needs screening within
3 15 days of the offer for the risk and needs screening.

4 (1) The Department or the community provider shall report the risk level
5 result of the screening, the number and source of the collateral contacts made,
6 and the recommendation for charging or other alternatives to the State's
7 Attorney.

8 (2) Information related to the present alleged offense directly or
9 indirectly derived from the risk and needs screening or other conversation with
10 the Department or community-based provider shall not be used against the
11 youth in the youth's criminal or juvenile case for any purpose, including
12 impeachment or cross-examination. However, the fact of participation in risk
13 and needs screening may be used in subsequent proceedings.

14 (e) ~~If The State's Attorney shall refer directly to court diversion a youth~~
15 ~~alleged to have committed any offense other than those specified in subsection~~
16 ~~5204(a) of this title who~~ presents a low to moderate risk to reoffend based on
17 the results of the risk and needs screening, ~~the State's Attorney shall refer a~~
18 ~~youth directly to court diversion~~ unless the State's Attorney states on the
19 record at the hearing held pursuant to section 5283 of this title why a referral
20 would not serve the ends of justice. If the court diversion program does not
21 accept the case or if the youth fails to complete the program in a manner

1 deemed satisfactory and timely by the provider, the youth's case shall return to
2 the State's Attorney for charging consideration.

3 Sec. 7. 33 V.S.A. § 5287 is amended to read:

4 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

5 ~~(a) A motion may be filed at any time in the Family Division requesting~~
6 ~~that the court~~ The Family Division may, at any time, terminate the youth's
7 status as a youthful offender and discharge him or her from probation. ~~The~~
8 ~~motion may be filed by the State's Attorney, the youth, the Department, or the~~
9 ~~court on its own motion. The court shall set the motion for hearing and provide~~
10 ~~notice and an opportunity to be heard at the hearing to the State's Attorney, the~~
11 ~~youth, the Department for Children and Families and the Department of~~
12 ~~Corrections.~~

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

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

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

18 (3) reports of treatment personnel; and

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

20 (c) If the court finds that the youth has successfully completed the terms of
21 the probation order, it shall terminate youthful offender status, discharge the

1 youth from probation, and file a written order dismissing the Family Division
2 case. The Family Division shall provide notice of the dismissal to the Criminal
3 Division, which shall dismiss the criminal case.

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

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

10 Sec. 8. 33 V.S.A. subchapter 6 is amended to read:

11 Subchapter 6. Placement of ~~Minors~~ Juveniles in Secure Facilities

12 § 5291. DETENTION OR TREATMENT OF ~~MINORS~~ INDIVIDUALS

13 CHARGED AS DELINQUENTS IN SECURE FACILITIES FOR

14 THE DETENTION OR TREATMENT OF DELINQUENT

15 CHILDREN

16 (a) Prior to disposition, the court shall have the sole authority to place a
17 child who is in the custody of the Department in a secure facility used for the
18 detention or treatment of delinquent children until the Commissioner
19 determines that a suitable placement is available for the child. The court shall
20 not order placement in a secure facility without a recommendation from the
21 Department that placement in a secure facility is necessary. The court order

1 shall include a finding that no other suitable placement is available and the
2 child presents a risk of injury to himself or herself, to others, or to property.

3 * * *

4 Sec. 9. EFFECTIVE DATE

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