

Treating Juvenile Offenders in Juvenile Court

Justice for Children Conference – Supplemental materials for presentation by Pamela A. Marsh, J.D.

List of Resource Materials:

I. Vermont Materials

A. Vermont Rules for Family Proceedings

1. Rule 1 – Procedure for Juvenile Delinquency Proceedings
2. Juvenile Competency Rule - Rule 1(i)

(i) Determination of Competence to Be Subject to Delinquency Proceedings.

(1) In general. The issue of a child's competence to be subject to delinquency proceedings may be raised by motion of any party, or upon the court's own motion, at any stage of the proceedings.

(2) Mental Examination. Competence shall be determined through a mental examination conducted by a psychologist or psychiatrist selected by the court. In addition to the factors ordinarily considered in determining competence in criminal proceedings, the examiner shall consider the following as appropriate to the circumstances of the child:

(A) The age and developmental maturity of the child;

(B) whether the child suffers from mental illness or a developmental disorder, including mental retardation;

(C) whether the child has any other disability that affects the child's competence; and

(D) any other factor that affects the child's competence.

The child, or the state, shall have the right to obtain an independent examination by an expert.

(3) Report. The report of an examination ordered by the court or obtained by the child or the state is to be sealed and filed in the juvenile court, with copies transmitted to counsel and available to the parties for review.

(4) Statements Made in the Course of Examination. No statement made in the course of an examination by the child examined, whether or not

the child has consented to, or obtained, the examination, shall be admitted as evidence in the delinquency proceedings for the purpose of proving the delinquency alleged or for the purpose of impeaching the testimony of the child examined.

(5) Hearing. The issue of competence shall be determined by the court after a hearing at which all parties are entitled to present evidence. The hearing shall be held as soon as practicable after the reports of the examination or examinations are filed.

(6) Determination of Competence. If the court determines that the child is competent to be subject to delinquency proceedings, the proceeding shall continue without delay.

(7) Determination of Incompetence. If the court determines that the child is not competent to be subject to delinquency proceedings, the court shall dismiss the petition without prejudice; provided that, if the child is found incompetent by reason of developmental disabilities or mental retardation, the dismissal may be with prejudice.

B. Vermont Juvenile Procedures Act, 33 V.S.A. Part 4

1. Chapter 51 – General Proceedings

a) Definitions

(1) § 5102(2)(C) – definition of “child” as pertains to delinquency cases

(2) § 5102(9) – definition of “delinquent act” (excludes most snowmobile and motor vehicle offenses)

(3) § 5102(10) – definition of “delinquent child”

(4) § 5102(17) – defines “listed crime” as the same as defined in 13 VSA § 5301.

b) Jurisdiction – § 5103 – generally ends at or before child’s 18th birthday

c) Youthful offender jurisdiction – § 5104 – up to age 22.

d) Sealing of records – § 5119

2. Chapter 52 – Delinquency Proceedings

a) § 5202 – Order of adjudication noncriminal

b) §§ 5203 and 5204 transfer to and from juvenile court

c) Victim’s Rights

(1) §§ 5233, 5234, 5235, 5288

d) Custody – Subchapter 3

- e) Juvenile Probation – Subchapter 4
 - f) Youthful Offender procedure
 - (1) Subchapter 5, §§ 5281-5288
- C. Listed Crimes as defined in 13 V.S.A. § 5301
- (7) For the purpose of this chapter, “listed crime” means any of the following offenses:
- (A) stalking as defined in section 1062 of this title;
 - (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4) of this title;
 - (C) domestic assault as defined in section 1042 of this title;
 - (D) first degree aggravated domestic assault as defined in section 1043 of this title;
 - (E) second degree aggravated domestic assault as defined in section 1044 of this title;
 - (F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;
 - (G) aggravated sexual assault as defined in section 3253 of this title;
 - (H) lewd or lascivious conduct as defined in section 2601 of this title;
 - (I) lewd or lascivious conduct with a child as defined in section 2602 of this title;
 - (J) murder as defined in section 2301 of this title;
 - (K) aggravated murder as defined in section 2311 of this title;
 - (L) manslaughter as defined in section 2304 of this title;
 - (M) aggravated assault as defined in section 1024 of this title;
 - (N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;
 - (O) arson causing death as defined in section 501 of this title;
 - (P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;
 - (Q) maiming as defined in section 2701 of this title;
 - (R) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;
 - (S) unlawful restraint in the second degree as defined in section 2406 of this title;
 - (T) unlawful restraint in the first degree as defined in section 2407 of this title;
 - (U) recklessly endangering another person as defined in section 1025 of this title;
 - (V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);
 - (W) operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in section 1210(e) and (f) of Title 23;
 - (X) careless or negligent operation resulting in serious bodily injury or death as defined in section 1091(b) of Title 23;
 - (Y) leaving the scene of an accident with serious bodily injury or death as defined in section 1128(b) or (c) of Title 23;
 - (Z) burglary into an occupied dwelling as defined in subsection 1201(c) of this title;
 - (AA) the attempt to commit any of the offenses listed in this section; and

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title).

D. Final Report, Juvenile Justice Jurisdiction Study, National Center for Juvenile Justice, December 2007. (Purpose of the study was to analyze the possible impact on agencies such as the courts, DCF and the Department of Corrections of requiring misdemeanors and felonies, or just misdemeanors to be initiated in juvenile court in Vermont.)

<http://humanservices.vermont.gov/boards-committees/cfcpp/publications/publications-2007/>

II. Other Relevant Materials

A. "Youth Violence Myths and Realities: A Tale of Three Cities. The Different Story of Delinquent Youth as Told by the Media and by Juvenile Justice System Professionals and the Youth Themselves," Barry Krisberg, Ph.D., Christopher Hartney, Angela Wolf, Anna E. Casey Foundation, February 12, 2009. http://www.nccd-crc.org/nccd/pubs/2009_Casey_Youth_Report.pdf

B. Hannan, William, Judicial Waiver As The Only Equitable Method To Transfer Juvenile Offenders To Criminal Court, 193 Notre Dame Journal of Law Ethics and Public Policy, 2008

C. Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform

http://www.ncjservehttp.org/NCJJWebsite/publications_detail.asp?n=488

D. New IL law: 17-year olds charged with misdemeanors stay in juvenile court March 6, 2009

<http://modelsforchange.net/reform-progress/Promising-stories/seventeen.html?src=hometxt>

E. The Impact Of Youth Criminal Behavior On Adult Earnings, Sam Allgood, David B. Mustard, Robert S. Warren, Jr., University of Georgia , Terry College of Business , 2007

www.terry.uga.edu/~rswjr/Crime_Paper_JHC_Version_August_6_2007.pdf

F. Childhood on Trial: The Failed Practice of Trying and Sentencing Youth in Adult Criminal Court, Coalition for Juvenile Justice, 2005.

http://www.juvjustice.org/media/fckeditor/Coalition%20for%20Juvenile%20Justice%202005%20Annual%20Report_%20Childhood%20on%20Trial.pdf

G. Fact sheet on Trying and Sentencing Youth in Adult Criminal Court, Coalition for Juvenile Justice http://www.juvjustice.org/media/factsheets/factsheet_10.pdf

H. What are the Applications of Adolescent Brain Research on Juvenile Justice? Coalition for Juvenile Justice, 2006. http://www.juvjustice.org/media/resources/resource_138.pdf

- I. Donna Bishop and Charles Frazier, "Consequences of Transfer" in The Changing Borders of Juvenile Justice, Jeffrey Fagan and Franklin E. Zimring, eds., University of Chicago Press, 2000. (Bishop and Frazier conclude there was no evidence of general deterrence as a result of the adoption of New York's Juvenile Offender Law, reducing the age for cases to be filed in adult court to age 16, or in Idaho's mandatory transfer statute, requiring transfer of juveniles as young as fourteen to adult court for certain offenses. Id. at 245-246. In addition, there was no specific deterrence from treatment in the adult system versus the juvenile system.)
- J. Youth on Trial: A Developmental Perspective on Juvenile Justice, Thomas M. Grisso and Robert B. Schwartz, eds., University of Chicago Press, 2000.
- K. Handbook on Questioning Children: A Linguistic Perspective, 2nd edition, ABA Center on Children and the Law, American Bar Association, 1999.
- L. Forensic Evaluation of Juveniles, Thomas Grisso, Professional Resource Press, 1998.

INFORMATION FOR 16 AND 17 YEAR OLDS CHARGED IN DISTRICT COURT¹

Vermont law authorizes the prosecutor (State's Attorney) to file charges against 16 and 17 year olds either in adult or in juvenile court. If you are receiving this information sheet, the prosecutor has decided to charge you in adult court (also called "District Court").

You have a right to request a transfer of your case to juvenile court, either as a regular transfer (where the court's jurisdiction ends at age 18) or as a youthful offender transfer (where the court's jurisdiction can extend up to age 22). The main benefit of a transfer to juvenile court is that if you are found guilty, you have a civil adjudication of *delinquency* and do not end up with a *criminal record*. An adult criminal record obtained as a juvenile can in many cases be sealed (no one can see it) or expunged (removed and destroyed) in the future. However, if it is not sealed or expunged, or during the period before it is sealed or expunged, you may suffer some or all of the following consequences:

- ▶ Difficulty in obtaining employment, even if you have successfully completed a Diversion Program
- ▶ Restrictions on travel (such as entering Canada)
- ▶ Drug convictions may result in loss of federal financial aid for college or trade schools, and may prevent you from being able to live in federally subsidized housing
- ▶ Loss of your right to vote in some states, primarily for felony convictions
- ▶ Restrictions on future occupations based on conviction of certain types of crimes
- ▶ Restrictions on the ability to adopt children
- ▶ Requirement of registration as a sex offender and placement on the online sex offender registry (for certain offenses)
- ▶ Should you decide to enlist in the military, a criminal conviction may delay or have other impacts on your ability to serve.

These consequences could impact your life in the future, so it is important to think about them now. You should discuss these issues with an attorney prior to entering a guilty or no contest plea or even accepting a referral to the Diversion Program. If you cannot afford an attorney, you should apply for Public Defender services. The application form for Public Defender services is at District Court and online at <http://www.vermontjudiciary.org/eforms/Form%20358cr.pdf>.

¹ This information is provided as a public service by the Juvenile Law Committee of the Vermont Bar Association.