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Juvenile Justice

Juvenile justice is a facet of criminal law that encapsulates “persons not old enough to be held fully responsible for criminal acts,”¹ meaning that they do not qualify for adult criminal culpability. In most states, this age is set at eighteen years, but depending on the severity of the crime, this age can be lowered, and thus, juveniles can receive adult charges. Persons involved in the juvenile justice system are often referred to as “juvenile delinquents” or “juvenile offenders.”² A “‘Delinquent Act’ means an act designated a crime under the laws of the State, or of another state if that act occurred in another state or under federal law.”³

Juvenile law is primarily governed by states and carried out following juvenile codes.⁴ State statutes establish juvenile courts, which provide a variety of methods to deal with juvenile delinquency.⁵ Although Juvenile Justice is primarily regulated at the state level, there is the Juvenile Justice and Delinquency Prevention Act (JJDP), which is the primary federal statute that relates to juvenile justice.⁶ The primary features include assistance for “states and local communities in providing community-based services to juveniles in danger of becoming a delinquent, helps train individuals in occupations providing such services, and provides technical assistance in the field.”⁷

Even though juvenile justice deals with criminal matters, it differs from the adult criminal justice system. Rather than a greater focus on punishment, as it is for adult criminal charges, juvenile justice emphasizes rehabilitation and prevention.⁸ Some examples of rehabilitation and prevention include “pay restitution for the damage they have caused, maintain school attendance, abide by a curfew, or complete certain educational or treatment programs.”⁹ Another common

¹ Legal Information Institute, “Juvenile Justice,” Legal Information Institute, Cornell University, 2023, accessed December 18, 2023, https://www.law.cornell.edu/wex/juvenile_justice.

² Justia, “Juvenile Crimes & the Legal System,” accessed December 18, 2023, <https://www.justia.com/criminal/offenses/other-crimes/juvenile-crimes/>.

³ Vermont Statutes, “33 V.S.A. § 5102,” accessed December 18, 2023, <https://legislature.vermont.gov/statutes/section/33/051/05102>.

⁴ Legal Information Institute, “Juvenile Justice.”

⁵ Legal Information Institute, “Juvenile Justice.”

⁶ Legal Information Institute, “Juvenile Justice.”

⁷ Legal Information Institute, “Juvenile Justice.”

⁸ Justia, “Juvenile Crimes & the Legal System.”

⁹ “Juvenile Crimes & the Legal System.”

alternative is probation.¹⁰ If a juvenile is sentenced to incarceration, they will typically be placed in a juvenile detention facility with other kids in their age group.¹¹

As mentioned above, the application of juvenile law depends on the severity for criminal acts. Those at the most severe end of the spectrum are categorized as the “Big Twelve” criminal offenses. Vermont State Statute 33 V.S.A. § 5204(a) categorizes crimes as Big Twelve as follows:

1. “[A]rson causing death as defined in 13 V.S.A. § 501 or an attempt to commit that offense;
2. Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b) or an attempt to commit that offense;
3. Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c) or an attempt to commit that offense;
4. Aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to commit that offense;
5. Murder as defined in 13 V.S.A. § 2301 and aggravated murder as defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;
6. Manslaughter as defined in 13 V.S.A. § 2304 or an attempt to commit that offense;
7. Kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit that offense;
8. Unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an attempt to commit that offense;
9. Maiming as defined in 13 V.S.A. § 2701 or an attempt to commit that offense;
10. Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an attempt to commit that offense;
11. Aggravated sexual assault as defined in 13 V.S.A. § 3253 and aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an attempt to commit either of those offenses; or,
12. Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c) or an attempt to commit that offense.”¹²

History

In 1981, the landscape of juvenile justice changed suddenly and rapidly in Vermont to encompass a much more comprehensive age range of youthful offenders for the Big Twelve crimes. The change occurred when of a special legislative session in the summer of 1981 amended the law after a horrific crime committed by two teens. The effects of this event have been long-lasting in the juvenile landscape in Vermont today.

Leading up to the 1980s, no youth under sixteen could be tried in criminal adult court in Vermont. Youthful offenders, instead of being convicted of a crime, could only be found to be “delinquent.”¹³ Upon being found delinquent, a youth could face three primary outcomes:

- The youth could be returned to the custody of the parents;

¹⁰ “Juvenile Crimes & the Legal System.”

¹¹ Justia, “Juvenile Crimes & the Legal System.”

¹² Vermont General Assembly, “33 V.S.A. § 5204,” legislature.vermont.gov, accessed December 18, 2023, <https://legislature.vermont.gov/statutes/section/33/052/05204>.

¹³ Peter Meyer, *Death of Innocence*, (New York: G.P. Putnam’s Sons, 1985), 182.

- The youth could be placed in Social and Rehabilitation Services; or,
- The youth could be placed on probation.

If the state took custody of a youth for juvenile detention, they were only permitted to do so until their 18th birthday; the detained person had to be released as they are no longer considered a juvenile delinquent.¹⁴ The state also protected information on juvenile court proceedings, the charges, and the status of the youth.¹⁵

In the summer of 1981, two youths, James Savage and Louis Hamlin, raped and brutally stabbed two twelve-year-old girls in Essex Junction, Vermont, killing one of the girls.¹⁶ Hamlin, who was sixteen at the time of the crime, could be charged as an adult in court. He was found guilty of first-degree murder and was sentenced to forty-five years to life.¹⁷ Savage, on the other hand, was fifteen at the time of the crime, barring him from being charged in adult court for the murder. With the laws of the time, he could only be found as a delinquent, meaning that he could go free with no public criminal record once he turned eighteen.¹⁸

The outcry in the state of Vermont was swift and robust. Citizens pushed for a special legislative session to draft legislation to reform the juvenile justice system that they viewed as inadequate because of this case.¹⁹ It was thought by many in Vermont to be a flawed system to address youth crime as there were minimal repercussions or punishment for youths who committed serious offenses.²⁰ A campaign started by two Essex junction women and protests from Vermonters around the state eventually persuaded the Governor to call for a special legislative session two months after the crime.²¹ This session, expected to tighten down on juvenile justice, did precisely that in “H.1 An Act Relating to Juvenile Crime.” The new law allowed juveniles to be charged in criminal courts.²² Under this new law, any juvenile from the ages of ten to sixteen charged with one of the previously mentioned “Big Twelve Offenses” would be tried as adults with the possibility of jail time, life imprisonment, or the death penalty. Notably, there would be no age criterion for prosecuting murder, with which any juvenile could be charged.²³ Juveniles charged with a Big Twelve Offense would be charged publicly, with the victims and their families being informed about the status and location of the offender. The bill also prohibits juveniles from being housed in detention centers for adults, which eventually lead to the creation of the Woodside Juvenile Rehabilitation Center.²⁴ For crimes other than “Big Twelve Offences”, juveniles were still charged as “Delinquent,” their juvenile records remained confidential and deleted after they were released.²⁵

¹⁴ Neil Davis, “State Authorities Still Debating Savage Charges,” *The Burlington Free Press*, July 23, 1982, 13.

¹⁵ UPI, “Open Hearing Asked for Murder Suspect, 15,” *The New York Times*, September 13, 1981, 77.

¹⁶ Mike Donoghue, “2 Youths Arrested in Essex Murder,” *The Burlington Free Press*, May 22, 1981, 1.

¹⁷ David Karvelas, “Hamlin Transferred to Prison in Missouri,” *The Burlington Free Press*, November 20, 1982, 2B

¹⁸ Davis, “State Authorities Still Debating Savage Charges,” 13.

¹⁹ UPI, “Memories of a Murderer Lingering in Vermont,” *The New York Times*, July 19, 1982, A11.

²⁰ UPI, “Memories of a Murderer,” A11.

²¹ Karvelas, “Hamlin Transferred to Prison in Missouri,” 2B.

²² Meyer, *Death of Innocence*, 187.

²³ Meyer, *Death of Innocence*, 187.

²⁴ Leslie Brown, “Juvenile Crime: A New Attitude,” *The Burlington Free Press*, May 11, 1986, 1.

²⁵ Meyer, *Death of Innocence*, 187.

Juvenile Justice: Family vs. Criminal Courts

In Vermont, Juvenile Court and its respective proceedings are housed within the Family Division.²⁶ That said, depending on the age and extent of the crime, the jurisdiction can be moved from Family to the Criminal Division. The following section will address the Vermont state statutes determining whether a juvenile will be under the Family or Criminal Division jurisdiction.

First, Vermont state statute 33 V.S.A § 5102: “Definitions and Provisions of General Application,” provides a range of definitions for what a “child” means in terms of the law, indicating whether proceedings will have initial jurisdiction in juvenile court.

- Any child alleged to have committed any offense other than the “Big Twelve Crimes” before attaining 20 years of age will originate in the Family Division of the Superior Court. 33 V.S.A § 5201(d).²⁷
- “An individual who has been alleged to have committed or has committed an act of delinquency after becoming [ten] years of age and prior to becoming [twenty-two] years of age.” 33 V.S.A § 5102 (C).²⁸
- If the child has committed a delinquency act before the age of [ten], that would be defined as murder if committed by an adult; a juvenile court will have jurisdiction. 33 V.S.A § 5102(C)(i).²⁹

The abovementioned statutes mean that if those qualifications are present, the case will have initial jurisdiction in Juvenile Court. Vermont statute simultaneously holds that cases that don’t automatically qualify for the Family Division may be eligible if a State’s Attorney files the charges as a youthful offender petition;³⁰ the State’s Attorney may commence a proceeding in the Family Division of the Superior Court.³¹

Moving forward, Vermont state statute also establishes in 33 V.S.A. § 5201: “Commencement of Delinquency Proceedings,” the qualifications for a juvenile delinquent to have initial jurisdiction in the Criminal Division.

- “Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) [Big Twelve Offense] of this title after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court.” 33 V.S.A § 5201(c).³²

Finally, Vermont state statutes establish that jurisdiction in these cases can be transferred between the Criminal Division and the Family Division. This transfer can occur under the following circumstances.

²⁶ “Juvenile Court | Vermont Judiciary,” www.vermontjudiciary.org, n.d., <https://www.vermontjudiciary.org/family/juvenile-court>.

²⁷ Vermont General Assembly, “33 V.S.A. § 5201,” legislature.vermont.gov, accessed December 14, 2023, <https://legislature.vermont.gov/statutes/section/33/052/05201>.

²⁸ Vermont General Assembly, “33 V.S.A. § 5102.”

²⁹ Vermont General Assembly, “33 V.S.A. § 5102.”

³⁰ Vermont General Assembly, “33 V.S.A. § 5201.”

³¹ Vermont General Assembly, “33 V.S.A. § 5280,” legislature.vermont.gov, accessed December 14, 2023, <https://legislature.vermont.gov/statutes/section/33/052A/05280>.

³² Vermont General Assembly, “33 V.S.A. § 5201,”

- Motions can be filed in the Criminal Division of the Superior Court to request defendants who, at the time of the alleged offense, were at least Twelve years of age but not older than 22 be treated as youthful offenders. This motion can be filed by the State’s attorney, the defendant, or the court on its motion. 33 V.S.A. § 5281(a);³³
- The court can also initiate a transfer from the Criminal Division of the Superior Court to the Family Division Superior Court if the defendant was at least fourteen years old but not older than eighteen at the time of the alleged offense. 33 V.S.A. § 5203(b);³⁴
- Once a petition has been filed alleging delinquency, a motion of the State’s Attorney, and a hearing has occurred, the Family Division of the Superior Court may transfer to the Criminal Division of the Superior Court if the defendant is sixteen to nineteen years of age at the time of the alleged delinquent act. 33 V.S.A. § 5204 (a);³⁵ or,
- A State's Attorney may also transfer jurisdiction from the Family Division of the Superior Court to the Criminal Division of the Superior Court if the defendant is twelve to fourteen and is accused of one of the “Big Twelve” offenses. 33 V.S.A. § 5204 (a).³⁶

The table below, replicated from a 2022 legislative working group presentation by Lindy Boudreau, Juvenile Justice Director, and Tyler Allen, Adolescent Services Director, reflects the breakdown of the age range at the time of the alleged offense and their corresponding nishments regarding whether the alleged offense committed falls under the “Big Twelve” or not.³⁷

Juvenile Jurisdiction		
AGE at time of alleged offense	OFFENSE	
	OFFENSES other than big 12	BIG TWELVE
10-11	Proceedings start in Family; NO Transfer	Proceedings start in Family; NO Transfer 33VSA 5201(c)
12-13		Proceedings start in Family (5201(c)); Transfer to Criminal is an option (5204(a))
14-15	33 VSA 5201(d) & (e) 33 VSA 5204(a)	Proceedings start in Crim. (5201(c)); Transfer to Family as a delinquency is an option (5203(b)) or as YO (see chart below)
16-18	All Proceedings start in Family (5201(d) & (e)) Misdemeanors: NO Transfer Felonies: Transfer to Criminal upon motion (5204(a))	Proceedings start in Crim. (5201(c)) Transfer to Family as a delinquency is an option (5203(b)) or as YO (see chart below)
19-21	Only juvenile jurisdiction now is through YO (see chart below)	
	<ul style="list-style-type: none"> • 19-year-olds will be treated as delinquents in 2022 per Act 201 	

³³ Vermont General Assembly, “33 V.S.A. § 5281,” legislature.vermont.gov, accessed December 14, 2023, <https://legislature.vermont.gov/statutes/section/33/052A/05281>.

³⁴ Vermont General Assembly, “33 V.S.A. § 5203,” legislature.vermont.gov, accessed December 14, 2023, <https://legislature.vermont.gov/statutes/section/33/052/05203>.

³⁵ Vermont General Assembly, “33 V.S.A. § 5204,” legislature.vermont.gov, accessed December 14, 2023, <https://legislature.vermont.gov/statutes/section/33/052/05204>.

³⁶ Vermont General Assembly, “33 V.S.A. § 5204.”

³⁷ Lindy Boudreau and Tyler Allen, “Youth Justice in Vermont,” 2022, accessed December 18, 2023, <https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Judiciary/Bills/S.224/Witness%20Documents/S.224~Macie%20Rebel-Kidwell~Youth%20Justice%20in%20Vermont%20Presentation~3-17-2022.pdf>.

The next table below (from the same presentation as the one above) depicts the criteria for cases to be considered eligible for Youthful Offender status (YO – which allows older youth to avoid criminal sentencing and address their crime within the juvenile court system).³⁸

Cases that may be eligible for YO consideration		
Age at time of alleged offense	Cases with Criminal Court Jurisdiction	YO Eligibility
10 -11	None	Not applicable
12 -13	Big 12	Big 12 cases must be filed in the Family Division per 33 VSA 5201(c) Court may transfer to Criminal per 33 VSA 5204(a) Can be transferred back down as YO per 33 VSA 5281(a)
14-15	Big 12	Big 12 must be filed in Criminal per 33 VSA 5201(c), but may be transferred to Family as YO per 33 VSA 5281(a) & 5280(a) Alternatively, SAs may directly file Big 12 cases for 14 and 15-year-olds in the Family Division as a YO (33 VSA 5280(b) & 5280(a)(1)) – this is new per Act 45 of 2019
16-18	Felonies Big 12	Felonies must be filed in Family per 33 VSA 5201(e), but can be transferred to Criminal per 33 VSA 5204(a) and then transferred back down as YO (33 VSA 5281(a)) Big 12 shall be filed in Criminal per 33 VSA 5201(c), but may be transferred to Family as YO per 33 VSA 5281(a) & 5280(a) Alternatively, SAs may directly file Big 12 cases for 16 and 17-year-olds in the Family Division as a YO per 33 VSA 5280(b) & 5280(a)(1)
19-21	Any offense	All cases start in Criminal unless SA decides to file YO petition directly in Family (33 VSA 5280(b) & 5280(a)(1). Applies to any alleged offense. Any case that starts in Criminal may be transferred to Family for YO status consideration upon motion (33 VSA 5281(a) & 5280(a)(2))

Juvenile Justice in Other States

New Hampshire

Like in most of the United States, the age at which one is tried in adult criminal court in New Hampshire is eighteen, although this has only been the case since it was raised from seventeen in 2014.³⁹ Juvenile cases are handled by the Family Court Division in New Hampshire.⁴⁰ As in Vermont, in some instances, a juvenile can be transferred to criminal court depending on the crime's severity and the defendant's age. To be transferred to superior court, a transfer hearing must be held (unless the juvenile is sixteen years or older and requests the transfer themselves, in which case the hearing is not necessary), in which numerous criteria must be considered, such as the violent or deliberate nature of the offense, the maturity of the minor, the minor's prior record, and whether the minor is a potential danger to the community, among others.⁴¹

³⁸ Lindy Boudreau and Tyler Allen, "Youth Justice in Vermont."

³⁹ New Hampshire House of Representatives, "HB 525-FN, 2013 Session (N.H. 2013)," accessed December 18, 2023, <https://www.gencourt.state.nh.us/legislation/2014/HB0525.pdf>.

⁴⁰ New Hampshire Department of Health & Human Services, "Juvenile Courts," accessed December 18, 2023, <https://www.dhhs.nh.gov/programs-services/child-protection-juvenile-justice/juvenile-justice-services/juvenile-court>.

⁴¹ New Hampshire State Statutes, "Title XII Public Safety and Welfare, Chapter 169-B, Delinquent Children," Section 169-B:24, accessed December 18, 2023, <https://www.gencourt.state.nh.us/rsa/html/XII/169-B/169-B-24.htm>.

A juvenile fifteen years or older can be transferred to the superior court for any felony, while a juvenile thirteen years or older can only be tried and found criminally responsible for a select number of felonies, which are:

- First and Second-degree murder;
- Manslaughter;
- First and Second-degree assault;
- Kidnapping;
- Aggravated felonious sexual assault;
- Criminal restraint;
- Class A felony robbery;
- Attempted murder; and,
- Negligent homicide.⁴²

Massachusetts

Massachusetts has an extensive and independent juvenile court system, with forty-two judges and eleven divisions.⁴³ Massachusetts uses the term “delinquent child” to refer to “[a] child between Twelve and 18 years of age who commits any offense against a law of the commonwealth” (with exceptions for certain low-level violations like civil infractions and first-time misdemeanors).⁴⁴ Previously juveniles as young as seven could be charged in juvenile court, however in 2018 legislation raised the minimum age to twelve.⁴⁵ Despite having a higher minimum age to be tried in juvenile court than other states, in the case of first or second-degree murder charges for a defendant who is fourteen years or older, the juvenile court has no jurisdiction and the case automatically goes to criminal court.⁴⁶

Conclusion

Starting in the 1980s with a stringent tightening of juvenile punishment to the eventual relaxing of juvenile laws in more recent years, juvenile justice in Vermont has undergone a large amount of changes to try and address today's youthful offenders in the most effective way. Sporting a system with more variables than Massachusetts or New Hampshire, Vermont juvenile justice law stands out in its intricacy.

⁴² New Hampshire State Statutes, “Title LXII Criminal Code, Chapter 628, Responsibility,” accessed December 18, 2023, <https://www.gencourt.state.nh.us/rsa/html/LXII/628/628-1.htm>

⁴³ Commonwealth of Massachusetts, “Juvenile Court” accessed December 18, 2023, <https://www.mass.gov/orgs/juvenile-court>.

⁴⁴ “General Law - Part I, Title XVII, Chapter 119, Section 52.” <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section52>.

⁴⁵ General Court of the Commonwealth of Massachusetts, “An Act Relative to Criminal Justice Reform,” 2018, accessed December 18, 2023, <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69>.

⁴⁶ Commonwealth of Massachusetts, “General Law - Part I, Title XVII, Chapter 119, Section 74,” accessed December 18, 2023, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section74>.

This report was completed on December 18, 2023, by Morgan Ambrose, Nate Biscotti, and Luke McDermott under the supervision of VLRS Director, Professor Anthony “Jack” Gierzynski, in response to a request from Representative LaLonde.

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