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Subject:	Juvenile Court Proceedings - Delinquency	Page 1 of 17
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Purpose

To outline (1) when it is appropriate to seek an emergency care order and (2) the division’s responsibilities during juvenile court proceedings for delinquency. However, requirements of the statute on youthful offenders are not covered in this policy (See Policy No. 164)

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Definition

Family Court means the Family Division of the Superior Court.

Other Related Policies

No. 89	Locating and Evaluating Suitability of Noncustodial Parents, Relatives and Others
No. 162	Violation of Probation
No. 164	Youthful Offender
No. 171	Woodside Short-Term Program: Admissions
No. 165	Sealing of Juvenile Records
No. 163	Notifying Victims of Juvenile Delinquency

Policy

Seeking an Emergency Care Order

Division staff will request that law enforcement seek an emergency care order for a youth alleged to commit a delinquent act only when:


- the child's immediate welfare requires removal from the home; or
- the child's welfare is otherwise endangered

Only a law enforcement officer has the authority to take a child into physical custody.

Emergency Care Order

At the emergency care hearing, the division may recommend:

- a conditional custody order allowing the child to remain with the custodial parent, subject to conditions necessary and sufficient to protect the child, the community or both; or
- An order transferring temporary custody of the child to a noncustodial parent or relative; or
- a transfer of temporary custody to DCF pending a temporary care hearing

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Department’s Duty to Provide Notice to Noncustodial Parent

Division staff must make reasonable efforts to locate any noncustodial parent and provide the parent with:

- a copy of the emergency care order or conditional custody order, and
- notice of the temporary care hearing, and
- right to counsel.

If the noncustodial parent cannot be located, division staff must provide the court with a summary of the efforts made to locate the parent.

Youth’s Presence Required


The youth must be present at the temporary care hearing, a preliminary hearing and a merit hearing. If the youth is in DCF custody, the social worker must arrange for the child to be present.

There is no statutory requirement for the child to be present at other hearings. However, the youth should be given the opportunity to attend and speak to the judge whenever appropriate.

Division Responsibilities at the Temporary Care Hearing

At the temporary care hearing, the division must provide information about:

- 1) Any reasons for the child’s removal which are not set forth in the officer’s affidavit, which includes the division’s history with the child and family;
- 2) Services, if any, provided to the child and the family in an effort to prevent removal.
- 3) The need, if any, for continued custody of the child with the department, pending a hearing to adjudicate the merits of the petition;
- 4) Services which could facilitate the return of the child to the custodial parent, guardian, or custodian;
- 5) The identity and location of a noncustodial parent, a relative, or person with a significant relationship with the child known to the department who may be appropriate, capable, willing, and available to assume temporary legal custody of the child.
- 6) Additional information as required by:
 - a. the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 regarding the child’s residence over the last five years, and

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- b. the Indian Child Welfare Act pursuant to 25 U.S.C. § 1901 et seq. regarding the child’s membership or possible eligibility for members in a federally recognized Indian tribe.

Information for the Temporary Care Hearing (FS-605) is used to report this information.

Indian Child Welfare Act

The division recognizes and supports the intent of the Indian Child Welfare Act to support and preserve the family, tribal, and cultural affiliations of Indian children. Briefly summarized, the requirements of the Act that are relevant in Vermont are:

- 1) The state must identify Indian children subject to the Act, including a child who is a member of an Indian tribe or is eligible for membership in an Indian tribe or is the biological child of a member of the Indian tribe.
- 2) Indian parents and tribes have the right to notice of and to intervene in state proceedings involving Indian children;
- 3) In placing an Indian child, special preference must be given to a member of the child's extended family, other members of the child's tribe, and other Indian families, in that order.

Therefore, the division will inquire if a child is or may be an Indian child as defined in the Act. If so, the district office will promptly contact the DCF Assistant Attorney General for specific instruction on compliance with the Indian Child Welfare Act.


Assessing Suitability of Noncustodial Parent, Relatives and/or Persons with Significant Relationship

When the division has identified a person who may be appropriate, capable, willing, and available to assume temporary custody of the child, the division must conduct an assessment of the suitability of the person to care for the child. The court may continue the hearing if necessary to complete the assessment.

The assessment shall include:

- 1) consideration of the person’s ability to care for the child’s needs;
- 2) a check of allegations of prior child abuse or neglect by the person or by other adults in the person’s home.
- 3) a criminal history record (see next section)

See Policy No. 89 for detailed guidance on this topic.

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Obtaining Criminal Records

For any person being assessed for suitability, the division will seek written authorization to obtain their criminal history record from the Vermont Criminal Information Center (VCIC). All releases for VCIC checks will be sent to the Residential Licensing Unit.

If the division has reason to believe that the person has resided or been employed in any other state, the division must request, through VCIC, criminal history record information from those states.

If no disqualifying record is identified at the state level, statute requires that the division request a national criminal history record check of the person's criminal history through the Federal Bureau of Investigation (FBI). The Residential Licensing Unit will inform the social worker if this is necessary. If so, the individual being checked must obtain fingerprints through a fingerprinting center. The division will pay the necessary fees.

The worker should give the individual a copy of FS-804 Information about National Records Checks, which also contains information about where to obtain fingerprints in Vermont counties.

Division staff will promptly provide a copy of the criminal history record, if any, to the person, along with information about his or her right to appeal the accuracy and completeness of the record through the Vermont VCIC.

Protective orders

Under 33 VSA §5115, the division (or any other party) may file a motion for the court to make an order restraining or otherwise controlling the conduct of a person when that conduct is or may be detrimental or harmful to a child. Such orders may be issued ex parte or after a hearing, and may be reviewed at subsequent hearings.

A person subject to a protective order who intentionally violates provisions concerning contact with the child is subject to punishment as provided in 13 VSA § 1030.

Protective Supervision

Protective supervision is “the authority granted by the court to the department in a juvenile proceeding to take reasonable steps to monitor compliance with the court’s conditional custody order, including unannounced visits to the home in which the child currently resides”. 33 VSA § 5102 (24)

The court may order Protective Supervision as part of a disposition order.

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Filing of Initial Case Plan within Sixty Days

If the court grants DCF custody at the temporary care hearing, the division must file an initial case plan for the child and the family within 60 days. The department must provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem. If the disposition takes place within 60 days of the court ordering custody, the dispositional case plan may serve as the initial case plan.

33 VSA § 5257(b) specifies that the initial case plan shall not be used or referred to as evidence prior to a finding that a child is in need of care or supervision. If a parent or his or her attorney has questions about the use of this information in upcoming court proceedings, he or she should be referred to the state's attorney.

Refer to Policy No. 122 for information on case plans and plan reviews.

Disposition Case Plan for Delinquents

Once the court makes a merits finding and order, the division must submit a disposition case plan within 28 days of the date of the order. To the extent that the safety of the public and the juvenile allow, plans for the juvenile should focus on the family and allow him or her to remain in his or her own community.

The division may recommend one or more of the following dispositional options:

- 1) Juvenile Probation for fixed period of time or until further order of the court;
- 2) Continuing or returning legal custody to the custodial parent, guardian, or custodian. The division may recommend that for a fixed period, this order be subject to such conditions necessary and sufficient to provide for the safety of the child and the community, including protective supervision for up to one year;
- 3) Transfer of legal custody to a noncustodial parent, relative, or person with a significant connection to the child;
- 4) Transfer of custody to DCF; or
- 5) Termination of parental rights without limitation as to adoption.

Juvenile probation will be recommended for all delinquents regardless of custody status in order to:

- support the full range of community-based placement options for delinquent youth in custody, including placement home;
- assure that the benefits of a balanced approach to juvenile offenses is available to all

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- delinquent youth; and,
- facilitate the youth's reintegration to the community from restrictive placement.

Child Support

The payment of child support is one way that parents continue their commitment to and responsibility for their children who are in the commissioner's custody. The division will request that the court address child support to be paid by each parent for all children in custody except:

- a parent who is supported by Reach Up Family Assistance (RUFA) or SSI will not be asked to pay child support;
- in rare cases, in which requesting child support is clearly detrimental to the child's best interest, including when the Office of Child Support has granted a domestic violence waiver.

The Child Benefit's Unit (CBU) will address child support at disposition for each new custody entrant. When the court has not already addressed child support issues, the CBU will request that child support be addressed at the next Permanency Hearing.

Genetic Testing

Where parentage of a child is in question, or the court orders genetic testing, the CBU will assist the district office in obtaining genetic testing.


Family Contact – Delinquency Proceedings

33 VSA Chapter 52 on Delinquency does not contain detailed provisions for parent-child contact. However, the act specifies that a disposition case plan for a youth in DCF custody contain a recommendation for parent-child contact if appropriate. Both a temporary care order and a disposition order may contain orders for parent-child contact under such terms and conditions as are necessary for the protection of the child.

Sixty Day Post-Disposition Review

For any child whose permanency goal is reunification with a parent, the court will hold a post-disposition review within 60 days of the date of the disposition for the purpose of monitoring progress and reviewing the parent-child contact order.

The division must notify the child's foster parent, preadoptive parent, or relative caregiver

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of the hearing and that they have an opportunity to be heard at the hearings.

Please refer to Policy No. 122 for information on case plans and plan reviews.

Permanency Hearing

The transfer of legal custody to the department is for an indeterminate period but is subject to periodic review at a permanency hearing. The permanency hearing must be held within 12 months of the transfer of custody away from the custodial parent, and every 12 months thereafter.

The division must file with the court a notice of permanency review together with a case plan and recommendation for a permanency goal. The court must hold a permanency review hearing within 30 days of that filing.

The division must provide notice to the state’s attorney, all parties to the proceeding, and the child’s foster, pre-adoptive or relative caregivers.

Permanency Reasonable Efforts Finding

The division must also file a petition for a finding of reasonable efforts and a report or affidavit, with notice to all parties. Reasonable efforts to finalize a permanency plan may consist of:

- 1) reasonable efforts to reunify the child and family following the child’s removal from the home, where the permanency plan for the child is reunification; or
- 2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

Victim Notification

For the purposes of victim notification, when a youth has been adjudicated guilty of a act listed in 13 V.S.A. § 5301 (see Appendix A for list), the district office will send a copy of **Request For Notification For Victims of Juvenile Delinquency (FSD-320)** to the victim. The State’s Attorney’s office shall promptly notify a victim in a delinquency proceeding when conditions of release relate to the victim or a member of the victim’s family or current household.

If the victim requests notification, the district office must attempt to notify the victim before the juvenile is released from residential facility **to a community setting**. The name of the facility will not be disclosed.

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If the victim cannot be reached, the discharge may still occur. If release without notification occurs, the district office will take reasonable steps to give notification of the release as soon as possible. Notification efforts are considered reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

Notice may be verbal, but in cases when verbal notice is given, the district office will follow up with written notice, using the **Victim Notification Letter (FSD-321)**. A copy of the written notice will be filed in the juvenile's case record.

Modifying Court Orders/Violation of Probation

A disposition order is a final order. The division or any other party may file a motion to modify the disposition order, or any other order when there are changed circumstances that require the modification to serve the child's best interests.

During the period of probation, the division may request that the court modify or add to the conditions of probation, including when the youth fails to comply with conditions of probation.

Violations of conditions associated with high risk behavior for an individual, such as drug use by a youth recently out of rehabilitation, possession of a weapon, non-compliance with a relapse prevention plan, will ordinarily indicate the need to file a petition with the court alleging the violation of a condition of probation.

Minor violations (e.g. cutting classes, late for curfew, missed appointment) should be evaluated in light of patterns of behavior and what can be accomplished by initiating a violation hearing or other casework interventions.

Probation Detention

A social worker acting as a juvenile probation officer may detain a youth on probation or authorize any law enforcement officer to do so by giving the officer a written statement (Detention of Juvenile Probationer FSD-316), which specifies the violation.

This method of initiating violation of probation proceedings may be employed when the juvenile has violated a condition of his/her probation certificate and the juvenile's behaviors constitute:

- immediate risk to public safety;

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- immediate risk to abscond; or
- a chronic pattern (three or more) of minor violations.

A juvenile probation officer will detain a probationer only with the assistance of a law enforcement officer. The juvenile probation officer is responsible for promptly informing the court that the juvenile is in need of a hearing by the close of the next business day.

Placement of a Youth on Probation Detention

The full range of placements available to delinquents in custody may be considered for a youth on Probation Detention. Depending on the needs of the juvenile and the risks posed, detention placement may be made at home or in substitute care, including Woodside. The juvenile probation officer may place reasonable restrictions or limitations on the detained probationer to assure his or her presence in court on the next business day.

Vacating Court Orders

The division or any other party may petition the court to vacate some or all of its disposition order and/or to terminate its jurisdiction over the child. Unless all parties waive their right to a hearing, the court must hold a hearing on the petition and give notice to all parties.

Once the juvenile court's jurisdiction has been terminated, any previous orders regarding the legal relationships between the child and his other parents and/or guardians are fully reinstated. Examples of these types of orders include custody orders from a parentage or divorce proceeding, or a guardianship order from a probate proceeding. There is an important exception to this: if a judge in a disposition order 1) transfers legal custody of a child to the parent who was formerly the noncustodial parent and 2) closes the juvenile court case, this disposition order is not confidential and will be made part of the record in any existing parentage or divorce proceeding. In these limited circumstances, the juvenile court's disposition order actually replaces the previous custody order in the divorce/parentage case.

If the social worker recommends a different custody arrangement other than the arrangement that was in place prior to the commencement of the juvenile court proceedings, the juvenile court should not be asked to vacate orders and terminate jurisdiction. Rather, at the next permanency hearing, the social worker should make his or her recommendations for the child's custodial arrangements to the court.

If either parent owes court-ordered child support to the division, the child support order

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should not be vacated. Rather, it should be modified to order the parents to pay arrearages.

Informing Parents of their Rights

If, as a result of a court hearing, a child is ordered into the custody of the commissioner, division staff shall promptly provide the child's parents of their rights to appeal certain decisions made by the division. The booklet entitled ***Your Child in Foster Care*** will be given to the parents of all children in custody, including temporary custody.

Social Worker Tasks:

Emergency Care Order

- If the danger to the child is immediate and severe or if it is after hours, enlists the appropriate law enforcement agency to take the child into custody.
- If a police officer takes a child into custody, may provide a supplemental affidavit to the police.
- Obtains copy of order, if granted.

Following the Emergency Care Hearing

- Makes every effort to locate and notify the child's parents, including any absent (custodial or non-custodial) parent, of the child's status as soon as possible. Informs them of the date and location of the temporary care hearing, and of the procedure for them to obtain legal representation.
- Completes:
 - Face Sheet (FSD-609)
 - Contact Sheets FSD-240)
 - Placement Form (FSD-580)
 - Incident of Abuse/Neglect /Form (FSD-590), if appropriate
 - Medicaid Application/Title IV-E (FSD/DSW 201-FC/M)
 - Placement Checklist
- Assesses the service needs of the parents and child at the earliest opportunity.
- Coordinates with Guardian-ad-litem and the child's attorney to assess the best plan for the child.

Temporary Care Hearing

- If the youth is in DCF custody, arranges for the youth to be present in court.
- Prepares appropriate paperwork for the State's Attorney and/or Court.:

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- Supplemental Affidavit for Temporary Care Hearing
- Assessment of Suitability for Noncustodial Parent and/or Relatives Report
- If it appears the child may be subject to the Indian Child Welfare Act, notifies assigned Assistant Attorney General.
- Sends any releases obtained for Background Checks to the Residential Licensing Unit.
- Provides court with Family Assessment Forms (Juvenile Proceedings Act (JPA) forms).

Following Merits Adjudication

- Completes Incident Form.

Child Support

- Responds promptly to requests from the CBU. When requesting discharge or termination of parental rights, includes request for termination of orders of child support to DCF, except arrearages owed.

For Disposition Hearing

- Works with family, the child if appropriate, and others to formulate a disposition recommendation and case plan, including information about (1) the child's risks and needs and protective factors in the context of his or her family, education and community; and, (2) the available resources of the family and community.
- Discusses dispositional options with supervisor and completes risk assessment (see Policy No. 179).
- Initiates child support activities, according to office protocol.
- Submits Disposition Case Plan to the Court and/or State's Attorney with sufficient copies of reports for all parties, within 28 days of merits finding.
- If contested case, assists the state's attorney with development of witness list.
- Attends hearing, testifying as necessary.
- Obtains copy of any order and/or probation certificate issued.
- Explains all decisions and orders to the child and his or her parents, including the consequences of violation of an order.
- If needed, arranges for medical and dental care for the child, psychological evaluation, and or special education evaluation.

Victim Notification

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- If victim has requested, attempts to notify the victim before the juvenile is released from residential facility **to a community setting**. The name of the facility will not be disclosed.
- Notice may be verbal, but in cases when verbal notice is given, the district office will follow up with written notice, using the **Victim Notification Letter (FSD-321)**.
- If the victim cannot be reached, proceeds with discharge and attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.
- Files copy of the written notice in the case record.

Sixty Day Post-Disposition Review

- Notifies child's foster parent, preadoptive parent, or relative caregiver of the hearing and that they have an opportunity to be heard at the hearing.
- Prepares to provide information about the progress towards case plan goals and the status of parent-child contact.

Reassessment

- Completes risk reassessment prior to 6 month case plan review, at closure on moderate or higher risk cases, and when new charges are filed. (See Policy No. 179)

Permanency Hearing

- Notifies child's foster parent, preadoptive parent, or relative caregiver of the hearing and that they have an opportunity to be heard at the hearing.
- Files a notice of permanency review together with an current case plan.

Violation of Probation

- Reviews with supervisor the documented behaviors which violate the youth's conditions of probation, the attempts made to address the violation with the youth and his or her family, the purpose of a violation proceeding in the context of the case plan and the desired outcome.
- Receives supervisor's approval to file violation complaint.
- Prepares Probation Violation Complaint (Court Form 62) affidavit specifying the condition(s) of probation violated and the supporting information. Files Probation Violation Complaint according to local protocols.
- If probable cause is found, attends preliminary hearing. If appropriate, requests that

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the court order Conditions of Release (Court Form 111) to support existing probation conditions during the violation proceeding.

- Provides state's attorney necessary information and witness list if the case goes to a contested Violation Hearing.
- At the Violation Hearing, testifies as necessary. Either:
 - comes prepared with modified conditions of probation or disposition alternatives; or,
 - requests a Hearing to Modify Disposition and prepares Supplemental Disposition to support significant changes to the Disposition Order.

Requesting Extension to Term Probation

- Completes risk reassessment.
- Receives supervisory approval to extend term of probation.
- Files VOP or motion to modify disposition with the court.

Probation Detention

- Consults with supervisor on the need for probation detention. Discusses the type of placement necessary to meet the need and specific restrictions that may be necessary to support the detention.
- Receives supervisory approval to proceed with detention and for type of detention placement.
- Secures placement resource.
- Completes Detention of Juvenile Probationer (FSD-316).
- Provides FSD-316 and copy of Juvenile Probation Certificate to a law enforcement officer & facility where child will be placed. With assistance from officer, detains youth in least secure, available placement capable of addressing the identified risks. (When a law enforcement officer authorized by FSD-316 is to detain a youth after hours, the probation officer, if not present, informs Emergency Services of specific placement plans.)
- Promptly informs the court of the detention and of the need for a hearing on the next working day.
- Informs the parent, custodian or guardian who signed the probation warrant of the scheduled hearing.
- Prepares a VOP affidavit (Court Form 62), including the specific conditions violated and supporting information and files before the hearing.
- If probable cause is found at the hearing and the youth will continue in care, requests

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that the court issue a temporary care order.

- Places youth, now a delinquent in custody, in the least restrictive, available placement that can meet his or her needs.
- At a Violation Hearing, testifies as necessary, either:
 - coming with modified conditions of probation or disposition alternatives;
 - or requesting a Hearing to Modify Disposition.
- If hearing to modify disposition will be held, prepares Supplemental Disposition Report to support significant changes to the disposition order.

Vacating Orders

- Discusses proposed action with supervisor, determining the appropriate scope of the petition, and whether or not all parties agree.
- Prepares Petition to Vacate (FSD-312 A or B, see below):
 - If all parties agree, prepares Petition to Vacate (FSD-312A) and obtains signatures of all parties, including at a minimum (1) the child, when age appropriate; (2) both parents and any guardian; (3) guardian ad litem; (4) attorneys of record; and (5) any other unrepresented party. (Note: parties who are competent may sign without an attorney.)
 - If all parties do not agree, or it is desirable to schedule a hearing, prepares Petition to Vacate (FSD-312B) and Affidavit listing the reasons that court orders should be vacated and/or jurisdiction terminated.

Appendix – Listed Acts

Victims Rights – Listed Acts

"Listed act" means any of the following offenses listed in 13 VSA Chapter 165§ 5301:

- (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;

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- (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(c) or (d) 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 section 1201(c) of this title; and
- (AA) the attempt to commit any of the offenses listed in this section. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986; amended 1989, No. 290 (Adj. Sess.), § 1; 1995, No. 170 (Adj. Sess.), § 5, eff. Sept. 1, 1996; 1999, No. 4, § 1.)

Charges – Listed Acts

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

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- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).