

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 642
3 entitled “An act relating to youthful offender proceedings” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

7 Sec. 1. 33 V.S.A. § 5284 is amended to read:

8 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
9 ORDER

10 (a)(1) In a hearing on a motion for youthful offender status, the court shall
11 first consider whether public safety will be protected by treating the youth as a
12 youthful offender. If the court finds that public safety will not be protected by
13 treating the youth as a youthful offender, the court shall deny the motion and
14 transfer the case to the Criminal Division of the Superior Court pursuant to
15 subsection 5281(d) of this title. If the court finds that public safety will be
16 protected by treating the youth as a youthful offender, the court shall proceed
17 to make a determination under subsection (b) of this section.

18 (2) When determining whether public safety will be protected by
19 treating the youth as a youthful offender, the court shall consider, on the basis
20 of the evidence admitted:

1 (A) the nature and circumstances of the charge and whether violence
2 was involved;

3 (B) the youth's mental health treatment history and needs;

4 (C) the youth's substance abuse history and needs;

5 (D) the youth's residential housing status;

6 (E) the youth's employment and educational situation;

7 (F) whether the youth has complied with conditions of release;

8 (G) the youth's criminal record and whether the youth has engaged in
9 subsequent criminal or delinquent behavior since the original charge;

10 (H) whether supervising the youth on youthful offender probation is
11 appropriate considering the nature of the charged offense and the age and
12 specialized needs of the youth;

13 (I) whether the youth has connections to the community; ~~and~~

14 (J) the youth's history of violence and history of illegal or violent
15 conduct involving firearms or other deadly weapons; and

16 (K) whether the youth has acknowledged that harm was caused by
17 the youth's alleged conduct, provided that information related to the present
18 offense directly or indirectly derived from the acknowledgement shall not be
19 used against the youth in the youth's criminal, youthful offender, or juvenile
20 case for any purpose, including impeachment or cross-examination.

21 (b)(1) The court shall deny the motion if the court finds that:

1 (A) the youth is not amenable to treatment or rehabilitation as a
2 youthful offender; or

3 (B) there are insufficient services in the juvenile court system and the
4 Department for Children and Families and the Department of Corrections to
5 meet the youth's treatment and rehabilitation needs.

6 (2) The court shall grant the motion if the court finds that:

7 (A) the youth is amenable to treatment or rehabilitation as a youthful
8 offender; and

9 (B) there are sufficient services in the juvenile court system and the
10 Department for Children and Families and the Department of Corrections to
11 meet the youth's treatment and rehabilitation needs.

12 (c)(1) If the court approves the motion for youthful offender treatment after
13 an adjudication pursuant to subsection 5281(d) of this title, the court:

14 (A) shall approve a disposition case plan and impose conditions of
15 juvenile probation on the youth; and

16 (B) may transfer legal custody of the youth to a parent, relative,
17 person with a significant relationship with the youth, or Commissioner,
18 provided that any transfer of custody shall expire on the youth's 18th birthday.

19 (2) Prior to the approval of a disposition case plan, the court may refer a
20 child directly to a youth-appropriate community-based provider that has been
21 approved by the ~~department~~ Department and which may include a community

1 justice center or a balanced and restorative justice program. Referral to a
2 community-based provider pursuant to this subdivision shall not require the
3 court to place the child on probation. If the community-based provider does
4 not accept the case or if the child fails to complete the program in a manner
5 deemed satisfactory and timely by the provider, the child shall return to the
6 court for further proceedings, including the imposition of the disposition order.

7 (d) The Department for Children and Families and the Department of
8 Corrections shall be responsible for supervision of and providing services to
9 the youth until the youth reaches 22 years of age. Both Departments shall
10 designate a case manager who together shall appoint a lead Department to have
11 final decision-making authority over the case plan and the provision of services
12 to the youth. The youth shall be eligible for appropriate community-based
13 programming and services provided by both Departments.

14 Sec. 2. 33 V.S.A. § 5285 is amended to read:

15 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

16 (a)(1) If it appears that the youth has violated the terms of juvenile
17 probation ordered by the court pursuant to subdivision 5284(c)(1) of this title, a
18 motion for modification or revocation of youthful offender status may be filed
19 in the Family Division of the Superior Court. The court shall set the motion
20 for hearing as soon as practicable. The hearing may be joined with a hearing
21 on a violation of conditions of probation under section 5265 of this title. A

1 supervising juvenile or adult probation officer may detain in an adult facility a
2 youthful offender who has attained 18 years of age for violating conditions of
3 probation.

4 (2) Notwithstanding subdivision 5103(c)(2)(B) of this title, when a
5 motion for modification or revocation of youthful offender status is pending
6 pursuant to this section, the Family Division's jurisdiction over the youth shall
7 remain in effect until the youth is discharged or until probation is revoked.
8 The Family Division may extend its jurisdiction over the youth beyond the
9 youth's 22nd birthday to the extent necessary to maintain jurisdiction under this
10 subdivision (2).

11 (b) A hearing under this section shall be held in accordance with section
12 5268 of this title.

13 (c)(1) If the court finds after the hearing that the youth has violated the
14 terms of ~~his or her~~ the youth's probation, the court may:

15 ~~(1)(A)~~ maintain the youth's status as a youthful offender, with modified
16 conditions of juvenile probation if the court deems it appropriate;

17 ~~(2)(B)~~ revoke the youth's status as a youthful offender and transfer the
18 case with a record of the petition, affidavit, adjudication, disposition, and
19 revocation to the Criminal Division for sentencing; or

20 ~~(3)(C)~~ transfer supervision of the youth to the Department of
21 Corrections with all of the powers and authority of the Department and the

Commissioner under Title 28, including graduated sanctions and electronic monitoring.

(2) If the court finds after the hearing that while on juvenile probation the youth was charged with a crime an element of which involves an act of violence against another person, the court shall revoke the youth's status as a youthful offender and transfer the case with a record of the petition, affidavit, adjudication, disposition, and revocation to the Criminal Division for sentencing, unless the youth proves to the court by a preponderance of the evidence that For purposes of making its determination under subdivision (1) of this subsection, the court shall consider whether:

(A) under the criteria of subdivision 5284(a)(2) of this title, public safety will be protected by continuing to treat the youth as a youthful offender; and

(B) the youth remains is amenable to treatment or rehabilitation as a youthful offender; and

(C) there are insufficient services in the juvenile court system and the Department for Children and Families and the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(d) If the youth fails to appear at a probation revocation hearing under this section, the court shall, unless it finds there was good cause for the failure to appear, **EITHER**

OR

(e) If a youth's status as a youthful offender is revoked and the case is transferred to the Criminal Division pursuant to subdivision ~~(e)(2)~~ (c)(1)(B) of this section, the court shall enter a conviction of guilty based on the admission to or finding of merits, hold a sentencing hearing, and impose sentence. Unless it serves the ~~interest~~ interests of justice, the case shall not be transferred back to the Family Division pursuant to section 5203 of this title. When determining an appropriate sentence, the court may take into consideration the youth's degree of progress toward or regression from rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

Sec. 3. 33 V.S.A. § 5288 is amended to read:

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1 (a) The victim in a proceeding involving a youthful offender shall have the
2 following rights:

3 (1) To be notified by the prosecutor in a timely manner:

4 (A) when a court proceeding is scheduled to take place and when a
5 court proceeding ~~to~~ of which the victim has been notified will not take place as
6 scheduled; and

7 (B) of any conditions of release or conditions of probation and of any
8 restitution unless otherwise limited by court order.

9 (2) To be present during all court proceedings subject to the provisions
10 of Rule 615 of the Vermont Rules of Evidence; to attend the hearing on the
11 motion to consider youthful offender status and the disposition hearing to
12 present a victim impact statement and to express reasonably the victim's views
13 concerning the offense ~~and~~ the youth, and the appropriateness of youthful
14 offender status, including testimony in support of the victim's claim for
15 restitution; and to submit oral or written statements to the court at such other
16 times as the court may allow. The court shall consider the victim's statement
17 when ordering disposition.

18 (3) To be notified by the agency having custody of the youth before the
19 youth is released into the community from a secure or staff-secured residential
20 facility.

1 (4) To be notified by the prosecutor as to the final disposition of the
2 case.

3 (5) To be notified by the prosecutor of the victim’s rights under this
4 section.

5 (b) In accordance with court rules, at a hearing on a motion ~~for~~ to consider
6 youthful offender ~~treatment~~ status, the court shall ask if the victim is present
7 and, if so, whether the victim would like to be heard regarding ~~disposition~~ the
8 motion. In ordering youthful offender status or disposition, the court shall
9 consider any views offered at the hearing by the victim. If the victim is not
10 present, the court shall ask whether the victim has expressed, either orally or in
11 writing, views regarding youthful offender status or disposition and shall take
12 those views into consideration in ordering youthful offender status or
13 disposition.

14 (c) No youthful offender proceeding shall be delayed or voided by reason
15 of the failure to give the victim the required notice or the failure of the victim
16 to appear.

17 (d) As used in this section, “victim” ~~shall have~~ has the same meaning as in
18 13 V.S.A. § 5301(4).

19 (e) This section shall not prohibit a victim from discussing underlying facts
20 of the alleged offense that resulted in death or physical, emotional, or financial
21 injury to the victim, provided that, unless otherwise provided by law or court

1 order, a victim shall not disclose what occurs during a court proceeding or
2 information learned through a court proceeding that is not an underlying fact of
3 the alleged offense that resulted in death or physical, emotional, or financial
4 injury to the victim.

5 Sec. 4. EFFECTIVE DATE

6 This act shall take effect on passage.

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13 (Committee vote: _____)

14 _____

15 Representative _____

16 FOR THE COMMITTEE