

1 H.642

2 Introduced by Representative LaLonde of South Burlington

3 Referred to Committee on

4 Date:

5 Subject: Human services; youthful offender; court procedures

6 Statement of purpose of bill as introduced: This bill proposes the following

7 changes to judicial proceedings involving youthful offenders: to require the

8 court to consider whether the youth has acknowledged that harm was caused

9 by the youth's alleged conduct when the court is determining whether public

10 safety will be protected by treating the youth as a youthful offender; to require

11 the court to revoke the youth's youthful offender status if while on probation

12 for the offense the youth is charged with a violent crime, unless the youth

13 shows that public safety will continue to be protected and that the youth

14 remains amenable to treatment as a youthful offender; to require the court to

15 revoke the youth's youthful offender status if the youth fails to appear at a

16 probation revocation hearing unless the court finds there was good cause for

17 the failure to appear; and to clarify that victims have a right to attend and

18 express their views at the youthful offender consideration hearing as well as

19 the disposition hearing.

20 An act relating to youthful offender proceedings

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

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

3       **§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION**

4                   **ORDER**

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

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

16                (A) the nature and circumstances of the charge and whether violence  
17       was involved;

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

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

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

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

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

2 (G) the youth's criminal record and whether the youth has engaged in

3 subsequent criminal or delinquent behavior since the original charge;

4 (H) whether supervising the youth on youthful offender probation is

5 appropriate considering the nature of the charged offense and the age and

6 specialized needs of the youth;

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

8 (J) the youth's history of violence and history of illegal or violent

9 conduct involving firearms or other deadly weapons; and

10 (K) whether the youth has acknowledged that harm was caused by

11 the youth's alleged conduct.

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

13 (A) the youth is not amenable to treatment or rehabilitation as a

14 youthful offender; or

15 (B) there are insufficient services in the juvenile court system and the

16 Department for Children and Families and the Department of Corrections to

17 meet the youth's treatment and rehabilitation needs.

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

19 (A) the youth is amenable to treatment or rehabilitation as a youthful

20 offender; and

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

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

20 (d) The Department for Children and Families and the Department of  
21 Corrections shall be responsible for supervision of and providing services to

1 the youth until the youth reaches 22 years of age. Both Departments shall  
2 designate a case manager who together shall appoint a lead Department to have  
3 final decision-making authority over the case plan and the provision of services  
4 to the youth. The youth shall be eligible for appropriate community-based  
5 programming and services provided by both Departments.

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

7 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

8 (a) If it appears that the youth has violated the terms of juvenile probation  
9 ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion  
10 for modification or revocation of youthful offender status may be filed in the  
11 Family Division of the Superior Court. The court shall set the motion for  
12 hearing as soon as practicable. The hearing may be joined with a hearing on a  
13 violation of conditions of probation under section 5265 of this title. A  
14 supervising juvenile or adult probation officer may detain in an adult facility a  
15 youthful offender who has attained 18 years of age for violating conditions of  
16 probation.

17 (b) A hearing under this section shall be held in accordance with section  
18 5268 of this title.

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

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

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

6           (3)(C) transfer supervision of the youth to the Department of  
7           Corrections with all of the powers and authority of the Department and the  
8           Commissioner under Title 28, including graduated sanctions and electronic  
9           monitoring.

10           (2) If the court finds after the hearing that while on juvenile probation  
11           the youth was charged with a crime an element of which involves an act of  
12           violence against another person, the court shall revoke the youth's status as a  
13           youthful offender and transfer the case with a record of the petition, affidavit,  
14           adjudication, disposition, and revocation to the Criminal Division for  
15           sentencing, unless the youth proves to the court by a preponderance of the  
16           evidence that:

17           (A) the public will be protected by continuing to treat the youth as a  
18           youthful offender; and

19           (B) the youth remains amenable to treatment or rehabilitation as a  
20           youthful offender.

6           (e) If a youth's status as a youthful offender is revoked and the case is  
7           transferred to the Criminal Division pursuant to subdivision ~~(e)(2)~~ (c)(1)(B) of  
8           this section, the court shall enter a conviction of guilty based on the admission  
9           to or finding of merits, hold a sentencing hearing, and impose sentence.

10 Unless it serves the interest interests of justice, the case shall not be transferred  
11 back to the Family Division pursuant to section 5203 of this title. When  
12 determining an appropriate sentence, the court may take into consideration the  
13 youth's degree of progress toward or regression from rehabilitation while on  
14 youthful offender status. The Criminal Division shall have access to all Family  
15 Division records of the proceeding.

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

17 § 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER

18 PROCEEDINGS

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

- 1 (1) To be notified by the prosecutor in a timely manner:
  - 2 (A) when a court proceeding is scheduled to take place and when a
  - 3 court proceeding ~~to~~ of which the victim has been notified will not take place as
  - 4 scheduled; and
  - 5 (B) of any conditions of release or conditions of probation and of any
  - 6 restitution unless otherwise limited by court order.
- 7 (2) To be present during all court proceedings subject to the provisions
- 8 of Rule 615 of the Vermont Rules of Evidence; to attend the hearing on the
- 9 motion to consider youthful offender status and the disposition hearing to
- 10 present a victim impact statement and to express reasonably the victim's views
- 11 concerning the offense ~~and,~~ the youth, and the appropriateness of youthful
- 12 offender status, including testimony in support of the victim's claim for
- 13 restitution; and to submit oral or written statements to the court at such other
- 14 times as the court may allow. The court shall consider the victim's statement
- 15 when ordering disposition.
- 16 (3) To be notified by the agency having custody of the youth before the
- 17 youth is released into the community from a secure or staff-secured residential
- 18 facility.
- 19 (4) To be notified by the prosecutor as to the final disposition of the
- 20 case.

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

15 (d) As used in this section, “victim” shall have has the same meaning as in  
16 13 V.S.A. § 5301(4).

17 (e) This section shall not prohibit a victim from discussing underlying facts  
18 of the alleged offense that resulted in death or physical, emotional, or financial  
19 injury to the victim, provided that, unless otherwise provided by law or court  
20 order, a victim shall not disclose what occurs during a court proceeding or  
21 information learned through a court proceeding that is not an underlying fact of

1 the alleged offense that resulted in death or physical, emotional, or financial  
2 injury to the victim.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on passage.