

H.642

Introduced by Representative LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Human services; youthful offender; court procedures

Statement of purpose of bill as introduced: This bill proposes the following changes to judicial proceedings involving youthful offenders: to require the court to consider whether the youth has acknowledged that harm was caused by the youth's alleged conduct when the court is determining whether public safety will be protected by treating the youth as a youthful offender; to require the court to revoke the youth's youthful offender status if while on probation for the offense the youth is charged with a violent crime, unless the youth shows that public safety will continue to be protected and that the youth remains amenable to treatment as a youthful offender; to require the court to revoke the youth's youthful offender status if the youth fails to appear at a probation revocation hearing unless the court finds there was good cause for the failure to appear; and to clarify that victims have a right to attend and express their views at the youthful offender consideration hearing as well as the disposition hearing.

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:

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

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

11 (2) Prior to the approval of a disposition case plan, the court may refer a
12 child directly to a youth-appropriate community-based provider that has been
13 approved by the ~~department~~ Department and which may include a community
14 justice center or a balanced and restorative justice program. Referral to a
15 community-based provider pursuant to this subdivision shall not require the
16 court to place the child on probation. If the community-based provider does
17 not accept the case or if the child fails to complete the program in a manner
18 deemed satisfactory and timely by the provider, the child shall return to the
19 court for further proceedings, including the imposition of the disposition order.

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.

1 (d) If the youth fails to appear at a probation revocation hearing under this
2 section, the court shall, unless it finds there was good cause for the failure to
3 appear, revoke the youth's status as a youthful offender and transfer the case
4 with a record of the petition, affidavit, adjudication, disposition, and revocation
5 to the Criminal Division for sentencing.

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.

1 (5) To be notified by the prosecutor of the victim's rights under this
2 section.

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

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.