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H.642

Representative Maguire of Rutland City moves that the bill be amended by striking out Sec. 1, 33 V.S.A. § 5285, in its entirety and inserting in lieu thereof eight new sections to be Secs. 1–8 to read as follows:

Sec. 1. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State’s Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court if the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)–~~(11)~~(14) of this subsection or if the child had attained 12 years of age but not ~~14~~ 16 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson 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;

1 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
2 § 608(c) or an attempt to commit that offense;

3 (4) aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to
4 commit that offense;

5 (5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as
6 defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;

7 (6) manslaughter as defined in 13 V.S.A. § 2304 or an attempt to
8 commit that offense;

9 (7) kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit
10 that offense;

11 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an
12 attempt to commit that offense;

13 (9) maiming as defined in 13 V.S.A. § 2701 or an attempt to commit
14 that offense;

15 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an
16 attempt to commit that offense; ~~or~~

17 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and
18 aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an
19 attempt to commit either of those offenses;

20 (12) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3) or an
21 attempt to commit that offense;

1 ~~(b) A State’s Attorney may commence a proceeding in the Family Division~~
2 ~~of the Superior Court concerning a child who is alleged to have committed an~~
3 ~~offense after attaining 14 years of age but not 22 years of age that could~~
4 ~~otherwise be filed in the Criminal Division.~~

5 (1) Upon the filing of a petition or a motion under subdivision (a)(1) or
6 (2) of this section and the entering of a conditional plea of guilty by the youth,
7 the Criminal Division of the Superior Court shall enter an order deferring the
8 sentence and hold a hearing on the motion. If the youth declines to enter a
9 conditional plea, youthful offender status shall be denied.

10 (2) As used in this subsection, “conditional plea of guilty” means
11 agreement by the parties to a plea arrangement that:

12 (A) includes outcomes for successful and unsuccessful youthful
13 offender rehabilitation program completion; and

14 (B) is conditioned on the granting of youthful offender status that
15 may be withdrawn in the event that youthful offender status is denied.

16 ~~(c) If a State’s Attorney files a petition under subdivision (a)(1) of this~~
17 ~~section, the~~ The case shall proceed as provided under subsection 5281(b) of
18 this title. Except as provided in subdivision 5283(c)(2) of this title, upon the
19 commencement of a youthful offender proceeding, and after hearing from the
20 parties and the victim, the court may close future proceedings until youthful
21 offender status is denied or revoked if it finds for good cause shown that

1 safeguarding the physical and psychological well-being of a youth under 18
2 years of age outweighs the public’s interest in open proceedings. The court
3 shall make specific findings on the record supporting an order under this
4 subsection.

5 (d)(1) ~~Within 15 days after the~~ Upon commencement of a youthful
6 offender proceeding pursuant to ~~subsection (a)~~ of this section, the court shall
7 notify the youth that the youth is required to complete a risk and needs
8 screening, which shall be conducted by the Department or by a community
9 provider that has contracted with the Department to provide risk and needs
10 screenings. The notice shall inform the youth that youthful offender status
11 may be denied if the youth fails to participate in the risk and needs screening.

12 (2) The risk and needs screening shall be completed prior to the youthful
13 offender status hearing held pursuant to section 5283 of this title. Unless the
14 court extends the period for the risk and needs screening for good cause
15 shown, the ~~Family Division~~ court shall reject the case for youthful offender
16 treatment if the youth does not complete the risk and needs screening within 15
17 days after the offer for the risk and needs screening.

18 (3) The Department or the community provider shall report the risk level
19 result of the screening, the number and source of the collateral contacts made,
20 and the recommendation for charging or other alternatives to the State’s
21 Attorney.

1 ~~alleged to have been committed be treated as a youthful offender. The motion~~
2 ~~may be filed by the State's Attorney, the defendant, or the court on its own~~
3 ~~motion.~~

4 (b) Unless the State's Attorney refers the youth directly to court diversion
5 pursuant to subsection 5280(e) of this title, upon the filing of a motion ~~under~~
6 ~~this section~~ or the filing of a youthful offender petition pursuant to section
7 5280 of this title, the ~~Family Division~~ court shall hold a hearing pursuant to
8 section 5283 of this title. ~~Pursuant to section 5110 of this title, the~~ The hearing
9 shall be confidential as provided in section 5280 of this title. ~~Copies of all~~
10 ~~records relating to the case shall be forwarded to the Family Division.~~

11 Conditions of release and any Department of Corrections supervision or
12 custody shall remain in effect until:

13 (1) the Family Division accepts the case for treatment as a youthful
14 offender and orders conditions of juvenile probation pursuant to section 5284
15 of this title;

16 (2) any conditions of release or bail are modified, amended, or vacated
17 pursuant to 13 V.S.A. chapter 229; or

18 (3) the case is otherwise concluded.

19 ~~(e)~~(b)(1) If the Family Division rejects the case for youthful offender
20 treatment pursuant to section 5284 of this title, the case shall be transferred to
21 the Criminal Division. The conditions of release imposed by the Criminal

1 Division shall remain in effect, and the case shall proceed as though the motion
2 for youthful offender treatment or youthful offender petition had not been
3 filed.

4 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and
5 Rule 410 of the Vermont Rules of Evidence, the ~~Family Division's~~ court's
6 denial of the motion for youthful offender treatment and any information
7 related to the youthful offender proceeding shall be inadmissible against the
8 youth for any purpose in the subsequent Criminal Division proceeding.

9 ~~(d)~~(c) If the Family Division accepts the case for youthful offender
10 treatment, ~~the case shall proceed to a confidential merits hearing or admission~~
11 ~~pursuant to sections 5227-5229 of this title~~ the youth shall not be permitted to
12 withdraw the youth's plea of guilty after youthful offender status is approved
13 except to correct manifest injustice pursuant to Rule 32(d) of the Vermont
14 Rules of Criminal Procedure.

15 Sec. 4. 33 V.S.A. § 5282 is amended to read:

16 § 5282. ~~REPORT FROM THE DEPARTMENT~~

17 ~~(a) Within 30 days after the youth has completed the risk and needs~~
18 ~~screening pursuant to section 5280 of this title, unless the court extends the~~
19 ~~period for good cause shown or the State's Attorney refers the youth directly to~~
20 ~~court diversion pursuant to subsection 5280(e) of this title, the Department for~~

1 ~~Children and Families shall file a report with the Family Division of the~~
2 ~~Superior Court.~~

3 ~~(b) A report filed pursuant to this section shall include the following~~
4 ~~elements:~~

5 ~~(1) a recommendation as to whether diversion is appropriate for the~~
6 ~~youth because the youth is a low to moderate risk to reoffend;~~

7 ~~(2) a recommendation as to whether youthful offender status is~~
8 ~~appropriate for the youth; and~~

9 ~~(3) a description of the services that may be available for the youth.~~

10 ~~(c) A report filed pursuant to this section is privileged and shall not be~~
11 ~~disclosed to any person other than:~~

12 ~~(1) the Department;~~

13 ~~(2) the court;~~

14 ~~(3) the State's Attorney;~~

15 ~~(4) the youth, the youth's attorney, and the youth's guardian ad litem;~~

16 ~~(5) the youth's parent, guardian, or custodian if the youth is under 18~~
17 ~~years of age, unless the court finds that disclosure would be contrary to the best~~
18 ~~interests of the child;~~

19 ~~(6) the Department of Corrections; or~~

20 ~~(7) any other person when the court determines that the best interests of~~
21 ~~the youth would make such a disclosure desirable or helpful. [Repealed.]~~

1 Sec. 5. 33 V.S.A. § 5283 is amended to read:

2 § 5283. DISPOSITION HEARING IN FAMILY DIVISION

3 (a) Timeline. Unless the State’s Attorney refers the youth directly to court
4 diversion pursuant to subsection 5280(e) of this title, a youthful offender
5 ~~consideration~~ disposition hearing shall be held not later than ~~60 days after the~~
6 ~~transfer of the case from the Criminal Division or filing of a youthful offender~~
7 ~~petition in the Family Division~~ 45 days after the filing of a motion or the filing
8 of a youthful offender petition under section 5280 of this title.

9 (b) Notice. Notice of the hearing shall be provided to the State’s Attorney;
10 the youth; the youth’s parent, guardian, or custodian; the victim; the
11 Department; and the Department of Corrections. The court shall not exclude
12 any victim from the proceeding or any portion of it unless, after hearing from
13 the parties and the victim, the court makes a finding on the record of good
14 cause. As used in this subsection, “victim” means a person who is the victim
15 of a crime for which a youth is charged; a parent, guardian, or legal
16 representative of the victim; or a victim’s advocate.

17 (c) Hearing procedure.

18 (1) If the motion is contested, all parties shall have the right to present
19 evidence and examine witnesses. Hearsay may be admitted and may be relied
20 on to the extent of its probative value. If reports are admitted, the parties shall

1 be afforded an opportunity to examine those persons making the reports, but
2 sources of confidential information need not be disclosed.

3 (2) For individuals who had attained 18 years of age but not 22 years of
4 age at the time the act is alleged to have been committed, hearings under
5 5284(a) of this title shall be open to the public. ~~All other youthful offender~~
6 ~~proceedings shall be confidential.~~

7 (d) Burden of proof. The burden of proof shall be on the moving party to
8 prove by a preponderance of the evidence that a child should be granted
9 youthful offender status. If the court makes the motion, the burden shall be on
10 the youth.

11 (e) Further hearing. On its own motion or the motion of a party, the court
12 may schedule a further hearing within not more than 10 business days to obtain
13 reports or other information necessary for the appropriate disposition of the
14 case.

15 Sec. 6. 33 V.S.A. § 5284 is amended to read:

16 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
17 ORDER

18 (a)(1) In a hearing on a motion or petition for youthful offender status, the
19 court shall first consider whether public safety will be protected by treating the
20 youth as a youthful offender. If the court finds that public safety will not be
21 protected by treating the youth as a youthful offender, the court shall deny the

1 motion and transfer the case to the Criminal Division of the Superior Court
2 pursuant to subsection 5281(d) of this title, the conditions of release imposed
3 by the Criminal Division shall remain in effect, and the case shall proceed as
4 though the motion or petition for youthful offender treatment had not been
5 filed. If the court finds that public safety will be protected by treating the
6 youth as a youthful offender, the court shall proceed to make a determination
7 under subsection (b) of this section.

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

11 (A) the nature and circumstances of the charge and whether violence
12 was involved;

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

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

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

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

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

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

1 (H) whether supervising the youth on youthful offender probation is
2 appropriate considering the nature of the charged offense and the age and
3 specialized needs of the youth;

4 (I) whether the youth has previously not successfully completed
5 youthful offender treatment or otherwise had youthful offender status revoked;

6 (J) whether the youth has connections to the community; and

7 ~~(J)~~(K) the youth's history of violence and history of illegal or violent
8 conduct involving firearms or other deadly weapons.

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

10 (A) public safety will not be protected by treating the youth as a
11 youthful offender;

12 (B) the youth is not amenable to treatment or rehabilitation as a
13 youthful offender; or

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

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

18 (A) public safety will be protected by treating the youth as a youthful
19 offender;

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

1 ~~(B)~~(C) there are sufficient services in the juvenile court system and
2 the Department for Children and Families and the Department of Corrections
3 to 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 place the youth on conditions of probation pursuant to
7 28 V.S.A. chapter 5, or such additional conditions imposed by the court,
8 provided that the requirements of this subdivision (A) may be satisfied by
9 entering the single condition of probation required under subdivision (C) of
10 this subdivision (c)(1);

11 (B) shall approve a disposition case plan and impose conditions of
12 juvenile probation on the youth; ~~and~~

13 (C) shall include as a condition of probation adherence to the
14 disposition case plan approved by the court; and

15 ~~(B)~~(D) may transfer legal custody of the youth to a parent, relative,
16 person with a significant relationship with the youth, or Commissioner for
17 Children and Families, provided that any transfer of custody shall expire on the
18 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 and ~~which~~ that may include a community justice

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

7 (d)(1) 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~~ the earlier of:

10 (A) the youth successfully completing treatment and supervision; or

11 (B) the revocation of the youth's youthful offender designation

12 pursuant to section 5285 of this title.

13 (2) ~~Both Departments~~ the Department for Children and Families and the
14 Department of Corrections shall designate a case manager who together shall
15 appoint a lead ~~Department~~ department to have final decision-making authority
16 over the case plan and the provision of services to the youth. The youth shall
17 be eligible for appropriate community-based programming and services
18 provided by ~~both Departments~~ the Agency of Human Services.

1 Sec. 7. 33 V.S.A. § 5285 is amended to read:

2 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

3 (a) If it appears that the youth has violated the terms of juvenile probation
4 ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion
5 for modification or revocation of youthful offender status may be filed in the
6 Family Division of the Superior Court. The court shall set the motion for
7 hearing ~~as soon as practicable~~ within 10 business days. The hearing may be
8 joined with a hearing on a violation of conditions of probation under section
9 5265 of this title. ~~A~~ Consistent with the procedures of 28 V.S.A. § 301, a
10 supervising juvenile or adult probation officer may detain in an adult facility a
11 youthful offender who has attained 18 years of age for violating conditions of
12 probation. A youthful offender who has not attained 18 years of age may be
13 detained in a facility for juveniles pursuant to section 5266 of this title. A
14 youthful offender who is detained prior to attaining 18 years of age may be
15 transferred to an adult facility after the offender attains 18 years of age.

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

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

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

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

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

7 (d) If a youth’s status as a youthful offender is revoked ~~and the case is~~
8 ~~transferred to the Criminal Division~~ pursuant to subdivision (c)(2) of this
9 section, the court shall ~~enter a conviction of guilty based on the admission to or~~
10 ~~finding of merits,~~ hold a sentencing hearing, and impose sentence in
11 accordance with the conditional plea agreed to under subsection 5280(c) of this
12 title. Unless it serves the ~~interest~~ interests of justice, the case shall not be
13 transferred back to the Family Division pursuant to section 5203 of this title.

14 When determining an appropriate sentence, the court may take into
15 consideration the youth’s degree of progress toward or regression from
16 rehabilitation while on youthful offender status. The Criminal Division shall
17 have access to all Family Division records of the proceeding.

18 Sec. 8. 33 V.S.A. § 5286 is amended to read:

19 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

20 (a) If a youth is on probation as a youthful offender prior to reaching 18
21 years of age, the ~~Family Division~~ court shall review the youth’s case before ~~he~~

1 ~~or she~~ the youth reaches 18 years of age and set a hearing to determine whether
2 the court's jurisdiction over the youth should be continued past 18 years of
3 age. The hearing may be joined with a motion to terminate youthful offender
4 status under section 5285 of this title. The court shall provide notice and an
5 opportunity to be heard at the hearing to the State's Attorney, the youth, the
6 Department for Children and Families, and the Department of Corrections.

7 (b) After receiving a notice of review under this section, the State may file
8 a motion to modify or revoke pursuant to section 5285 of this title. If such a
9 motion is filed, it shall be consolidated with the review under this section and
10 all options provided for under section 5285 of this title shall be available to the
11 court.

12 (c) The following reports shall be filed with the court prior to the hearing:

13 (1) The Department for Children and Families and the Department of
14 Corrections shall jointly report their recommendations, with supporting
15 justifications, as to whether the ~~Family Division~~ court should continue
16 jurisdiction over the youth past 18 years of age and, if continued jurisdiction is
17 recommended, propose a case plan for the youth to ensure compliance with
18 and completion of the juvenile disposition.

19 (2) If the ~~Departments~~ departments recommend continued supervision
20 of the youthful offender past 18 years of age, the ~~Departments~~ departments
21 shall report on the services that would be available for the youth.

1 (d) If the court finds that it is in the best interests of the youth and
2 consistent with community safety to continue the case past 18 years of age, it
3 shall make an order continuing the court’s jurisdiction up to 22 years of age.
4 The Department for Children and Families and the Department of Corrections
5 shall jointly develop a case plan for the youth and coordinate services and
6 share information to ensure compliance with and completion of the ~~juvenile~~
7 youthful offender disposition.

8 (e) If the court finds that it is not in the best interests of the youth to
9 continue the case past 18 years of age, it shall terminate the disposition order,
10 discharge the youth, and dismiss the case in accordance with subsection
11 5287(c) of this title.
12 and by renumbering the remaining sections to be numerically correct.