S.224

Introduced by Committee on Judiciary

Date:

Subject: Juvenile proceedings; implementation of juvenile jurisdiction expansion; rights of victims

Statement of purpose of bill as introduced: This bill proposes to pause by one year the expansion of juvenile jurisdiction to 19-year-olds, to enhance the rights of victims in juvenile and youthful offender proceedings, and to make several other modifications to court proceedings in juvenile matters.

An act relating to juvenile proceedings

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

* * * Pause of Juvenile Jurisdiction Expansion * * *

Sec. 1. 2018 Acts and Resolves No. 201, Sec. 21 is amended to read:

Sec. 21. EFFECTIVE DATES

* * *

(d) Secs. 17–19 shall take effect on ~~July 1, 2022~~ July 1, 2023.

Sec. 2. 2020 Acts and Resolves No. 124, Sec. 12 is amended to read:

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 ~~(33 V.S.A. § 510(c))~~ (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect on ~~July 1, 2022~~ July 1, 2023.

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* * * Victim's Compensation and Restitution in Juvenile Proceedings * * *

Sec. 3. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

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(i) Upon receipt of a court order to seal a record relating to an offense for which there is an identifiable victim, a State's Attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a State's Attorney pursuant to this subsection shall be available only to victims' advocates, the Victims' Compensation Program, and the victim and shall otherwise be confidential. <u>The Victim's Compensation Program may be provided with a copy, redacted of all information identifying the youth or delinquent child, of the affidavit for the sole purpose of verifying the expenses in a victim's compensation application submitted pursuant to 13 V.S.A. § 5353.</u>

* * *

Sec. 4. 33 V.S.A. § 5235 is amended to read:

§ 5235. JUVENILE RESTITUTION

* * *

(e) In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the court shall fix the amount thereof, which shall not exceed an amount the juvenile can or will be able to pay, ~~and shall fix the manner of performance or refer to a restorative justice program that will address how loss resulting from the delinquency will be addressed,~~ and establish a restitution payment schedule based upon the juvenile's current and reasonably foreseeable future ability to pay, subject to modification under section 5264 of this title.

* * *

(k)(1) The Restitution Unit may bring an action to enforce a restitution order issued under this section in the Superior or Small Claims Court of the county where the offender resides or in the county where the order was issued. In an action under this subsection, a restitution order issued in a juvenile proceeding shall be enforceable in Superior or Small Claims Court in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action under this subsection and for an action to renew a restitution judgment.

(2) An action under this subsection may be brought only after the offender reaches 18 years of age and shall not be subject to any limitations period.

(3) For purposes of this subsection, a restitution order issued in a juvenile proceeding shall not be confidential. The sealing of a juvenile record shall not affect the authority of the Restitution Unit to enforce a restitution order in the same manner as a civil judgment under subdivision (1) of this subsection.

* * * Rights of Victims in Juvenile and Youthful Offender Proceedings * * *

Sec. 5. 13 V.S.A. § 5304 is amended to read:

§ 5304. VICTIMS ASSISTANCE PROGRAM

* * *

(2) Notification. Victims~~, other than victims of acts of delinquency,~~ shall be notified in a timely manner when a court proceeding involving their case is scheduled to take place and when a court proceeding to which they have been summoned will not take place as scheduled. Victims shall also be notified as to the final disposition of the case, and shall be notified of their right to request notification of a person's release or escape under section 5305 of this title. Notwithstanding this subdivision, the notification rights of victims of delinquent acts are governed by 33 V.S.A. chapters 52 and 52A.

* * *

Sec. 6. 13 V.S.A. § 5305 is amended to read:

§ 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

(a) Victims~~, other than victims of acts of delinquency,~~ and affected persons shall have the right to request notification by the agency having custody of the defendant before the defendant is released, including a release on bail or conditions of release, furlough, or other community program~~,~~; upon termination or discharge from probation~~,~~; or whenever the defendant escapes, is recaptured, dies, or receives a pardon or commutation of sentence. Notice shall be given to the victim or affected person as expeditiously as possible at the address or telephone number provided to the agency having custody of the defendant by the person requesting notice. Any address or telephone number so provided shall be kept confidential. The prosecutor's office shall ensure that victims are made aware of their right to notification of an offender's scheduled release date pursuant to this section. Notwithstanding this subsection, the right to information for victims of delinquent acts is governed by 33 V.S.A. chapters 52 and 52A.

* * *

Sec. 7. 33 V.S.A. § 5110 is amended to read:

§ 5110. CONDUCT OF HEARINGS

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for ~~his or her~~ the party's assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the court. An individual without party status seeking inclusion in the hearing in accordance with this subsection may petition the court for admittance by filing a request with the clerk of the court. ~~This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.~~

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings. This subsection shall not prohibit a victim from discussing underlying facts of the alleged offense that resulted in death or physical, emotional, or financial injury to the victim, provided that, unless otherwise provided by law or court order, a victim shall not disclose what occurs during a court proceeding, or information learned through a court proceeding that is not

1 an underlying fact of the alleged offense that resulted in death or physical,
2 emotional, or financial injury to the victim.
3 (d) This section shall not prohibit a victim's exercise of rights provided by
4 section 5234 of this title and as otherwise provided by law.
5 Sec. 8. 33 V.S.A. § 5126 is added to read:
6 § 5126. INFORMATION FROM LAW ENFORCEMENT AGENCY
7 (a) Information to all victims in juvenile and youthful offender
8 proceedings. After initial contact between a victim and a law enforcement
9 agency responsible for investigating the offense, the agency shall promptly
10 give in writing to the victim:
11 (1) an explanation of the victim's rights under this chapter and chapters
12 52 and 52A of this title; and
13 (2) information concerning the availability of:
14 (A) assistance to victims, including medical, housing, counseling,
15 and emergency services;
16 (B) compensation for victims under 13 V.S.A. chapter 167 and the
17 name, street address, and telephone number of the Center for Crime Victim
18 Services;
19 (C) protection for the victim, including protective court orders; and

(D) access by the victim and the offender to records related to the case that are public under the provisions of 1 V.S.A. chapter 5, subchapter 3 (access to public records).

(b) Information to victims of listed crimes. As soon as practicable, the law enforcement agency shall use reasonable efforts to give to the victim of a listed crime, as relevant, all of the following:

(1) information as to the offender's identity unless inconsistent with law enforcement purposes;

(2) information as to whether the offender has been taken into custody;

(3) the file number of the case and the name, office street address, and telephone number of the law enforcement officer currently assigned to investigate the case;

(4) the prosecutor's name, office street address, and telephone number;

(5) an explanation that no individual is under an obligation to respond to questions that may be asked outside a courtroom or deposition; and

(6) information concerning any conditions of release imposed on the offender prior to an initial court appearance, unless otherwise limited by court order.

Sec. 9. 33 V.S.A. § 5127 is added to read:

§ 5127. VICTIM'S RIGHT TO PRESENCE OF VICTIM'S ADVOCATE

When a victim in a juvenile or youthful offender proceeding is ordered by the court to attend or has a right to attend the proceeding, the victim may be accompanied at the proceeding by a victim's advocate.

Sec. 10. 33 V.S.A. § 5234 is amended to read:

§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A LISTED CRIME

(a) The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner of the following:

(A) when a delinquency petition has been filed, the name of the child and any conditions of release initially ordered for the child or modified by the court ~~that are related to the victim or a member of the victim's family or current household~~, unless otherwise limited by court order;

(B) ~~his or her~~ the victim's rights as provided by law, information regarding how a case proceeds through a delinquency proceeding, the confidential nature of delinquency proceedings, and that it is unlawful to disclose confidential information concerning the proceedings to another person;

(C) when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which ~~he or she~~ the victim has been notified will not take place as scheduled; and

(D) whether delinquency has been found and disposition has occurred, and any conditions of release or conditions of probation ~~that are related to the victim or a member of the victim's family or current household~~ and any restitution, ~~when ordered~~ unless otherwise limited by court order.

(2) To file with the court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution.

(3) To be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence and to express reasonably the victim's views concerning the offense and the youth, to attend the disposition hearing and to present a victim impact statement, including testimony in support of ~~his or her~~ the victim's claim for restitution pursuant to section 5235 of this title, and to be notified as to the disposition, including probation. The court shall consider the victim's statement when ordering disposition. ~~The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the court finds that the victim's presence is necessary in the interest of justice.~~

(4) ~~Upon request, to~~ To be notified by the agency having custody of the delinquent child before ~~he or she~~ the victim is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

(5) To have the court take ~~his or her~~ the victim's views into consideration in the court's disposition order. If the victim is not present, the court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition.

(6) [Repealed.]

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 11. 33 V.S.A. § 5234a is amended to read:

§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A NONLISTED CRIME

(a) The victim in a delinquency proceeding involving an offense that is not a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner of the following:

(A) ~~his or her~~ the victim's rights as provided by law, information regarding how a delinquency proceeding is adjudicated, the confidential nature of juvenile proceedings, and that it is unlawful to disclose confidential information concerning the proceedings;

(B) when a delinquency petition is filed;

(C) the child's name and the conditions of release ordered for the child or modified by the court ~~if the conditions relate to the victim or a member of the victim's family or current household~~ , unless otherwise limited by court order; and

(D) when a dispositional court proceeding is scheduled to take place and when a court proceeding of which ~~he or she~~ the victim has been notified will not take place as scheduled.

(2) That delinquency has been found and disposition has occurred, ~~and~~ any conditions of release or conditions of probation ~~that are related to the~~

~~victim or a member of the victim's family or current household~~ and any restitution ~~ordered~~, unless otherwise limited by court order.

(3) To file with the court a written or recorded statement of the impact of the delinquent act on the victim and any need for restitution.

(4) To attend the disposition hearing for the sole purpose of presenting to the court a victim impact statement, including testimony in support of ~~his or her~~ the victim's claim for restitution pursuant to section 5235 of this title. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of ~~his or her~~ the victim's claim for restitution unless the court finds that the victim's presence is necessary in the interest of justice.

(5) To be notified by the agency having custody of the child before the child is released from a residential facility.

(6) To have the court take ~~his or her~~ the victim's views into consideration in the court's disposition order. If the victim is not present, the court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition. The court shall order that the victim be notified as to the identity of the child upon disposition if the court finds that release of the child's identity to the victim is in the best interests of both the child and the victim and serves the interests of justice.

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 12. 33 V.S.A. § 5288 is amended to read:

§ 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER PROCEEDINGS

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

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

(A) when a court proceeding is scheduled to take place and when a court proceeding to which ~~he or she~~ the victim has been notified will not take place as scheduled; and

(B) of any conditions of release or conditions of probation and of any restitution, unless otherwise limited by court order;

(2) to be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence and to express reasonably ~~his or her~~ the victim's views concerning the offense and the youth;

(3) to ~~request notification~~ be notified by the agency having custody of the youth before the youth is released from a residential facility;

(4) to be notified by the prosecutor as to the final disposition of the case;

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

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

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

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

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

* * * Public Safety Requirement in Juvenile and Youthful Offender Cases * * *

Sec. 13. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION ORDER

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

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

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

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

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

(D) the youth's residential housing status;

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

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

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

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

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

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

* * *

Sec. 14. 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)–(12) of this subsection or if the child had attained 12 years of age but not 14 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;

(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).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of

this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) the maturity of the child as determined by consideration of ~~his or her~~ the child's age, home, and environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(2) the extent and nature of the child's prior record of delinquency;

(3) the nature of past treatment efforts and the nature of the child's response to them, including the child's mental health treatment and substance abuse treatment and needs;

(4) the nature and circumstances of the alleged offense, including whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(6) the prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings;

(7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court;

(8) the youth's residential housing status;

(9) the youth's employment and educational situation;

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

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

(12) whether the youth has connections to the community; and

(13) the youth's history of violence and history of illegal or violent conduct involving firearms.

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* * * Youthful Offender Risk and Needs Screening * * *

Sec. 15. 33 V.S.A. § 5280 is amended to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER PROCEEDINGS IN THE FAMILY DIVISION

* * *

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

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

~~(1)~~(3) The Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts

made, and the recommendation for charging or other alternatives to the State's Attorney.

~~(2)~~(4) Information related to the present alleged offense directly or indirectly derived from the risk and needs screening or other conversation with the Department or community-based provider shall not be used against the youth in the youth's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation in risk and needs screening may be used in subsequent proceedings.

* * *

* * * Psychosexual Evaluation * * *

Sec. 16. 33 V.S.A. § 5230 is amended to read:

§ 5230. DISPOSITION CASE PLAN

* * *

(d) Psychosexual evaluation. For purposes of determining appropriate conditions of probation for a disposition case plan under this section, the court may order a psychosexual evaluation for a child charged with:

(1) lewd and lascivious conduct in violation of 13 V.S.A. § 2601;

(2) lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602;

(3) sexual assault in violation of 13 V.S.A. § 3252;

(4) aggravated sexual assault in violation of 13 V.S.A. § 3253;

(5) aggravated sexual assault of a child in violation of 13 V.S.A. § 3253a;

(6) kidnapping with intent to commit sexual assault in violation of 13 V.S.A. § 2405(a)(1)(D); or

(7) an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

* * * Report on Secure Placements * * *

Sec. 17. REPORT

(a) On or before December 1, 2022, the Department for Children and Families shall report to the Senate and House Committees on Judiciary and on Institutions on the availability of secure placements and transitional housing for 18- and 19-year-olds subject to juvenile and youthful offender proceedings. The report shall include:

(1) both current and future options for secure placements, a plan to ensure that the placements are available for youth going forward, a description of the appropriate services to be provided, and a recommendation as to whether dual custody with the Department of Corrections should be considered; and

(2) a progress report on the requirement of Secs. 1 and 2 of this act that the Raise the Age initiative take effect on July 1, 2023.

(b) On or before July 1, 2022, the Department for Children and Families shall file a preliminary report to the Joint Legislative Justice Oversight

1 Committee describing the progress made toward completion of the final report

2 required by subsection (a) of this section.

3 * * * Effective Date * * *

4 Sec. 18. EFFECTIVE DATE

5 This act shall take effect on passage.