

**STATE OF VERMONT
VERMONT SUPREME COURT
SEPTEMBER TERM, 2022**

Order Promulgating the Addition of Rule 1.1 to the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 1.1 of the Vermont Rules for Family Proceedings be added to read as follows:

RULE 1.1 PROCEDURE FOR YOUTHFUL OFFENDER PROCEEDINGS

(a) **In General.** Rule 1, setting forth procedures for delinquency proceedings, governs all youthful offender proceedings in the family division, except as set forth in this rule.

(b) **Preliminary Proceedings.**

(1) *Risk Screening Notification.* Upon transfer from the criminal division or direct filing of a youthful offender petition in the family division, the court will notify the youth that the youth is required to participate in a risk screening within 15 days and that failure to do so could result in denial of youthful offender status.

(2) *Report.* Within 30 days after the youth has completed the risk screening, the Department for Children and Families must file with the court a report including a recommendation that the case should or should not be diverted, a recommendation that the case is or is not appropriate for youthful offender services, and a description of services available.

(3) *Bail and Conditions of Release.* Bail or conditions of release imposed by the criminal division remain in effect until the case is concluded, the conditions are struck or modified by the criminal division, or a disposition order is entered by the family division.

(c) **Hearing.**

(1) *Contested Hearings.* If a motion for youthful offender status is contested, hearsay may be admitted during the hearing and may be relied on to the extent of its probative value. Otherwise, the Vermont Rules of Evidence apply.

(2) *Colloquy.* Prior to granting a motion for youthful offender status, the court must engage in a colloquy ensuring that the youth voluntarily waives the right to a jury trial and the right to a public proceeding. If the youth does not waive those rights, the case will be transferred to the criminal division.

(d) **Collateral Consequences.** Pursuant to the Uniform Collateral Consequences Act, 13 V.S.A. §§ 8002-8017, the court must give notice of potential collateral consequences prior to granting a motion for youthful offender status and prior to accepting a plea.

(e) **Adjudication.**

(1) *Grant of Youthful Offender.* If the motion for youthful offender status is granted, the case will be adjudicated as provided in Rule 1, except that the entry of any conviction is deferred in the criminal division unless the court revokes youthful offender status pursuant to subdivision (f) of this rule.

(2) *Denial of Youthful Offender.* If the court denies the motion for youthful offender status, the case will be transferred to the criminal division.

(f) **Modification/Revocation.** Upon a finding that a youth has violated the terms of the juvenile probation order, the court may modify the terms of juvenile probation, transfer supervision of the youth to the Department of Corrections, or revoke youthful offender status. If youthful offender status is revoked, the case must be transferred to the criminal division for sentencing.

(g) **Termination of Probation.** Probation is terminated and the case closed when the term of probation is complete or when probation supervision is ended by any other means.

(h) **Close of Case.** If the term of probation expires or terminates, the case will be closed. The records in the criminal division will be expunged and the records in the family division will be sealed if required by 33 V.S.A. § 5287(c).

Reporter's Notes

Rule 1.1 is added to implement the provisions of Chapter 52A of Title 33, Youthful Offenders, 2017, No. 72 (Adj. Sess.). Section 7 of Act 72 directs the Vermont Supreme Court to consider the adoption of appropriate rules. For the most part, the provisions of Rule 1.1 track the procedural provisions outlined in statute. The Supreme Court's Advisory Committee on the Rules for Family Proceedings concluded that the consolidation of these provisions into a rule would enhance consistency of practice in youthful offender proceedings.

Subdivision (a) of the rule makes the provisions of Rule 1 applicable to youthful offender proceedings except as modified by this rule.

Paragraphs (b)(1) and (2) incorporate the provisions of 33 V.S.A. § 5280(d) and § 5282 related to a risk and needs screening of the youth and a report on the screening by the Department for Children and Families. While 33 V.S.A. § 5280(d) specifies that the Department conduct the screening, it does not specify which entity is responsible for notifying the youth of the screening requirement. Rule 1.1(b)(1) specifies that the notice be provided by the court. Paragraph (b)(3) incorporates the provisions of 33 V.S.A. § 5281(b)(1)-(3) related to conditions of release or bail.

Paragraph (c)(1) incorporates the provisions of 33 V.S.A. § 5283(c)(1) related to the admissibility of hearsay evidence at a contested youthful offender consideration hearing and provides that otherwise the Vermont Rules of Evidence apply. Paragraph (c)(2) requires that the court engage in a colloquy with the youth to ensure a voluntary waiver of the youth's rights to a jury trial and public proceeding. The colloquy is comparable to a colloquy under

V.R.Cr.P. 11 made applicable to juvenile delinquency proceedings pursuant to Rule 1(a)(3) with appropriate modifications.

Subdivision (d) requires notice to the youth of potential collateral consequences in conformance with 13 V.S.A. § 8005 and V.R.Cr.P. 11(c)(8) made applicable to juvenile delinquency proceedings pursuant to Rule 1(a)(3). The colloquy between the court and the juvenile regarding potential collateral consequences should occur both prior to the granting youthful offender status and prior to accepting a plea.

Paragraph (e)(1) makes applicable the provisions of Rule 1 related to delinquency proceedings if youthful offender status is granted. It also provides that an entry of a conviction in the criminal division is deferred unless the case is returned to the criminal division as a result of a decision to revoke the youthful offender status. In the event the motion is not granted, paragraph (e)(2) provides that the case will be transferred to the criminal division, as outlined in 33 V.S.A. § 5281(c)(1).

Subdivision (f) incorporates the provisions of 33 V.S.A. § 5285(c) setting forth the court's options if the youth violates conditions of probation and further provides that, in the event the case is transferred back to the criminal division, the case will be scheduled for a sentencing hearing. See 33 V.S.A. § 5285(d).

Subdivision (g) outlines the three grounds for termination of probation for a youthful offender including the conclusion of a fixed term of probation, the loss of jurisdiction over the youth because the youth has reached the age of 22 years of age, see 33 V.S.A. § 5103(c)(2)(D) (describing family division jurisdiction over a youthful offender), or termination of probation by the court upon motion pursuant to 33 V.S.A. § 5287(c).

Subdivision (h) incorporates the provisions of 33 V.S.A. § 5287(d) relating to the expungement of records in the Criminal Division and the sealing of records in the Family Division. See 33 V.S.A. § 5119.

2. That these amendments be prescribed and promulgated, effective on November 14, 2022. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 13th day of September, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice