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Subject:	Youthful Offender Status	Page 1 of 6
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Purpose

The Department for Children and Families, Family Services Division (DCF) has made a commitment to collaborate with the Department of Corrections (DOC) in all cases in which a child is adjudicated as a youthful offender. DCF and DOC have developed a protocol for such collaboration. This policy outlines policy and procedures for working with youth adjudicated as youthful offenders.


Policy

Some youth who have committed criminal acts may be best served in the juvenile system. These youth may be appropriate for adjudication as Youthful Offenders.

Request for Youthful Offender Status

Any party in an adult criminal proceeding in which the defendant has attained the age of 10 but not the age of 18 at the time of the offense specified V.S.A. § 5204 (a) may file a motion requesting the defendant be treated as a youthful offender. The district court may transfer the proceeding to family court for youthful offender consideration, if the defendant enters a conditional plea of guilty to the offense charged and an order deferring the sentence will be issued.

A family court hearing on whether youthful offender status is appropriate will take place within 35 days. Conditions of release and any DOC supervision or custody will remain in effect until the family court approves the motion for youthful offender status and juvenile conditions of probation are ordered.

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Determining Youthful Offender Status

If a motion to consider youthful offender status is granted by district court, a conditional plea of guilty must be entered by the youth. The case is transferred to family court for further hearing and DCF will prepare a report for the court which is due within 30 days after the case is transferred to family court, unless the court extends the period for good cause shown. The report will include:


1. A recommendation as to whether youthful offender status is appropriate for the youth.
2. A Family Services disposition case plan including services and proposed conditions of juvenile probation.
3. A description of the services that may be available to the youth when he/she reaches 18 years of age. Any recommendation of residential treatment services will be discussed with the Residential Services Unit prior to submission to the court.

The disposition case plan will be used as the basis for disposition in juvenile court. This report will be written by the assigned DCF social worker and be submitted to the court five days before the hearing date, or as ordered by the court.

At the hearing for youthful offender status, the court shall consider whether public safety will be protected by treating the youth as a youthful offender. If the court determines that public safety will be protected the court will then consider whether:

1. The youth is amenable to treatment or rehabilitation as a youthful offender
2. DCF can provide and make available sufficient services to meet the youth's treatment needs.

If the court grants the motion for youthful offender treatment, the court shall approve the disposition case plan and the youth will be placed on juvenile probation. The court may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or DCF. Any transfer of legal custody shall expire on the youth's 18th birthday. If the youth is within 3 months or beyond their 18th birthday, include a recommendation for supervision from DOC or DCF in the dispositional case plan.

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If the family court denies the motion for youthful offender status, the case will be returned to district court and the youth will be permitted to withdraw the plea. Any information related to the youthful offender proceeding shall be inadmissible against the youth in the subsequent criminal proceeding in district court.

If the youth is not awarded youthful offender status and is convicted in District Court, the case is the sole responsibility of DOC. If the youth is not awarded youthful offender status but the case is transferred to juvenile court and the youth is adjudicated delinquent in juvenile court, the case is the sole responsibility of DCF.

The Role of the Victim in Youthful Offender Proceedings

The victim has the following rights in a youthful offender proceeding (33 V.S.A. §5288):

- a.) To be notified by the prosecutor of court proceedings;
- b.) To be present during all court proceedings subject to Rule 615 of the Vermont Rules of Evidence and to express reasonably his or her views concerning the offense and the youthful offender;
- c.) To request notification by the agency having custody of the youthful offender before the youthful offender is released from a residential facility;
- d.) To be notified by the prosecutor as to the final disposition of the case; and
- e.) To be notified by the prosecutor of the victim's rights.


At the youthful offender disposition hearing the Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding disposition. If the victim is not present, the Court shall ask whether the victim has expressed views regarding disposition either orally or in writing, and shall take those views into consideration in ordering disposition.

Delivering Services to Youthful Offenders

DCF shall provide the youth with necessary services and supports to successfully complete conditions of the youthful offender disposition. DCF shall be responsible for supervision and providing services until the youth reaches the age of 18. The youth shall be eligible for all appropriate programming and services provided by DCF.

Modifying or Revoking Disposition

If the youth has not complied with conditions of the youthful offender disposition, DCF

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or DOC may file a VOP or a motion to modify or revoke disposition in the juvenile court. The court will inform the parties of the hearing time.

At the hearing, if the court finds that the youth has violated the terms of his or her probation the court may:

1. Maintain the youth’s youthful offender status, and modify the conditions of juvenile probation
2. Revoke the youth’s youthful offender status and return the case to the district court for sentencing.
3. Maintain the youth’s Youthful Offender status and transfer supervision of the youth to DOC.

If the youth’s status as a youthful offender is revoked, the case is returned to district court. The district court shall have access to family court records of the proceedings.

If the adult sentence is imposed, DOC assumes sole responsibility for the case, and juvenile court jurisdiction ceases. Upon case transfer, DCF will provide DOC with any information that may assist DOC in the performance of its responsibilities. Appropriate releases will be signed prior to the transfer of information.

Detention of a Youthful Offender over the age of 18 in an Adult Facility


Under the Memorandum of Understanding (MOU) between DOC and DCF, a supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained the age of 18 for violating conditions of probation. The MOU must be followed.

Mandatory Court Review Prior to Age 18

The family court will review the youthful offender's case before the youth reaches age 18. The hearing shall occur within 3 months of the 18th birthday.

At the hearing, DCF will report its recommendations for successful completion or continued jurisdiction over the youth past age 18. DCF shall provide justification as to why its recommendation is in the best interest of the youth and consistent with community safety.

If DCF recommends that the juvenile court continue youthful offender supervision, the

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report shall specify:

1. Which department should continue to provide supervision to the youth beyond 18. (Note: Remember to include this in the original disposition case plan if the youth is within 3 months or beyond their 18th birthday.)
2. A case plan jointly created by DOC and DCF.
3. A plan for coordinating services and sharing information in order to ensure compliance with and completion of the conditions of the juvenile probation.

DCF will recommend whether DCF or DOC should be responsible for the supervision of the youth.

If DCF is recommending DOC should be responsible for supervising the youthful offender past age 18, DOC shall report on the services which would be available to the youth in the event supervision is transferred to DOC.

If the court finds that it is in the best interests of the youthful offender and consistent with public safety to extend the court's jurisdiction beyond the youth's 18th birthday, it shall make an order continuing the court's jurisdiction up to the age of 22. (33 V.S.A. § 5104(b)). The order shall specify whether the youth will be supervised by DCF or DOC. Prior to the review hearing, a party may file a motion to modify or revoke the disposition pursuant to the provisions of 33 V.S.A. §5285. If such a motion is filed, it shall be consolidated with the court's review of the case.


If the court finds that it is not in the youthful offender's best interests to extend the court's jurisdiction beyond the youthful offender's 18th birthday, it shall discharge the youthful offender and dismiss the criminal case. (33 V.S.A. §5286).

Successful Completion or Continuance of Youthful Offender Disposition

If the youthful offender successfully completes the youthful offender disposition, any party may file a motion for a hearing to determine whether the youthful offender status should be terminated.

In determining whether a youth has successfully completed the terms of probation, DCF and/or DOC will provide information to the court on:

1. The degree to which the youth fulfilled the terms of the case plan and the probation order

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2. The youth's performance during treatment
3. Reports from treatment personnel
4. Any other relevant facts associated with the youth's behavior

If the court finds that the youthful offender has successfully completed the terms of the youthful offender disposition, it shall terminate the youthful offender status, discharge the youth from probation, and dismiss the criminal case per 33 V.S.A. §5287.

If the court finds that the youthful offender has not successfully completed the terms of the disposition or has not been sufficiently rehabilitated, it may deny the motion, extend or amend the probation order as it deems necessary.

Case Closure

The DCF case will be closed whenever:

- 1) Family court issues an order successfully discharging the youthful offender; or,
- 2) Family court issues an order of dismissal and transfers the jurisdiction of the case to District court for sentencing.

The DCF case will also be closed on the youthful offender's 22nd birthday if the court had previously extended its jurisdiction.