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*Agency of Human Services*

**Memo**

**To:** **Representative Grad,**
**House Judiciary Committee Members**
**From:** **Ken Schatz, Commissioner** KAS
**Re:** **S.23 Juvenile Justice**
**Date:** **April 5, 2017**

Thank you for the opportunity to speak to you about S.23. I also want to thank this committee for its support of Act 153 last year. These reforms to juvenile justice were important to ensuring that youth have the opportunity to avoid criminal court and therefore avoid permanent public records and other collateral consequences.

Many of the changes in S.23 are a result of recommendations made to the Joint Legislative Justice Oversight Committee last year in a legislative report compiled by the Department for Children and Families and the Department of Corrections. Act 153 is a complex bill that calls for changes that impact all justice system stakeholders. As such, DCF convened a justice system workgroup (comprised of DCF, DOC, the Judiciary, the Office of the Defender General and the State's Attorneys) to work through the changes in Act 153, and to determine if there might be any barriers to implement it in statute or policy.

Since S.23's passage in the Senate, we have had a chance to re-review both the bill and Act 153 itself. In this process, we uncovered a few additional changes that we would like to request be added to the bill. These proposed changes have been discussed with our stakeholder partners.

**Overview of S.23**

**Section 1:** We support opportunities for youth to avoid having a public record as this was an important element of Act 153. Therefore, we are in support of youthful offenders adjudicated in Family Court as sex offenders not being required to have their names on the public sex offender registry unless their status is revoked.

**Section 2:** We support the addition of a YO chapter in title 28 that clarifies DOC's roles and responsibilities in YO cases.

**Section 3:** DCF supports this section, which clarifies some definitions in the delinquency and YO chapters of title 33. The first change is a clarification of the definition of a "delinquent act." Act 153 added language (amending 4 V.S.A. §33) allowing family court jurisdiction of misdemeanor motor vehicle offenses. Upon further reflection of the law, the current definition of a "delinquent act" specifically excluded these offenses from the

jurisdiction of the Family Division. These two provisions of law contradict one another and language clarification is needed to allow Family Division jurisdiction of certain motor vehicle offenses. The second change is a clarification that the Commissioner of DOC is a party in YO cases.

**Section 4:** This section includes a number of important new provisions that clarify how YO cases will proceed in family court by providing:

- A new chapter for YO and the removal of inconsistent language;
- Clarification regarding DCF's and DOC's dual supervision roles and responsibilities;
- Clarification of the process for transferring a case from the Family Division to the Criminal Division when YO status is revoked and a record is created in the Criminal Division that includes the charge, conviction, disposition and revocation;
    - We are in support of this clarification. That said, regarding a youth waiving their right to a jury trial, we believe that the language in Section 6 is important for considering all of the potential implications for a youth whose YO status is revoked.
- Clarity for how a case shall proceed for youth who reach their 18th birthday before their case is adjudicated in Family Court.

DCF is supportive of all of these changes. Since S.23 passed the Senate, additional analysis of the bill has yielded additional changes to this section for the committee's consideration. Please see DCF's suggested language at the end of this memo.

**Section 5:** DCF proposed this language in order to improve the admissions process and to provide greater due process protections for youth in secure treatment facilities; in Vermont, this is Woodside. We worked with the judiciary, the Office of the Defender General and the State's Attorneys on this proposed language which provides:

- Pre-disposition, only the Court may order placement in a secure facility upon the recommendation of DCF.
    - Such a recommendation would only be forthcoming if a less restrictive option were not suitable for the youth.
- If a youth is in a secure facility, absent good cause shown, merits must be held and adjudicated within 45 days after the preliminary hearing or the case is dismissed.
- If a youth continues to be placed in a secure facility following merits, disposition should be held within 35 days of merits. If not, review of the secure placement decision must be done within 35 days after merits.
- Initial secure placement, secure placement at merits, secure placement disposition orders and post-merits review decisions may all be appealed to the Vermont Supreme Court in the same manner as the denial of bail review in 13 V.S.A. §7556(d).
- Following disposition, DCF retains its sole placement authority for secure facilities.

**Section 6:** As referenced in Section 4, DCF supports the review and recommendations of the rules committees clarifying that a youth adjudicated as a YO in the Family Division is waiving the right to a trial by jury if his/her status is revoked and the case is transferred to the Criminal Division for sentencing.

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**Additional Recommendations**

DCF has the following additional recommendations to the YO chapter in section 4 of the bill:

1. DCF recommends removing reference to the disposition case plan in 33 V.S.A. §5282(b)(2). Beginning July 1, 2018, YO cases can begin in either the Criminal Division, as they do now, or State's Attorneys may file YO petitions directly in the Family Division. In either case, the Court first considers whether a case is appropriate for YO treatment. Following that determination, the YO case proceeds to either a confidential admission or a merits hearing in the Family Division. Section 5282(b) is the section that requires DCF to make a recommendation to the Court about whether a case is appropriate for YO treatment. This recommendation will occur prior to the merits determination and, therefore, it would be premature for the Department to file a disposition case plan at this stage of the proceeding. The Department, therefore, proposes to strike 33 V.S.A. §5282(b)(2).

2. In addition, DCF would like to clarify its role in making recommendations for YO treatment in 33 V.S.A. §5282(b). Research and best practice dictate that youth who are low-risk for re-offense, as determined by a validated risk assessment tool, have better outcomes when they do not enter the criminal justice system and when State agencies treat them with a "light touch." As such, youth treated as YO who are low-risk would be better served if their cases were diverted and/or resolved using restorative justice practices. DCF contracts with Balance and Restorative Justice (BARJ) providers throughout the state to conduct risk assessment screenings on youth who are charged with crimes. Based on the results of these risk assessments, DCF would like to clarify that its recommendation for YO treatment should include that low-risk cases would be more appropriate for diversion rather than YO treatment.

3. Also in 33 V.S.A. §5282(b), DCF would like to remove the reference to services for YO cases when youth reach 18 because YO status will be available for youth up to age 21 beginning in 2018.

All of these proposed changes to 33 V.S.A. §5282 may be found below:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the Family Division or a youthful offender petition is filed in the Family Division, unless the court extends the period for good cause shown, the Department for Children and Families shall file a report with the Family Division of the Superior Court.

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

(1) a recommendation as to whether youthful offender status is appropriate for the youth, including a recommendation about whether the case is more appropriate for diversion because the youth has been determined to be low to moderate risk to reoffend;

~~(2) a disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved and youth adjudicated;~~

(~~3~~2) a description of the services that may be available for the youth ~~when he or she reaches 18 years of age~~.

* * *

4. DCF is also proposing language to amend the YO hearing procedures as outlined in 33 V.S.A. §5283(c)(2). When Act 153 was passed, one of its main goals was to reduce the collateral consequences that a public charge or conviction can have on a youth. There is a provision in current YO law that allows the initial hearing in the Family Division for consideration of a case for YO treatment to be public. While many other changes were made in the YO law to protect the confidentiality of youth and these proceedings, including protecting the admission to a crime and treating it confidentially, DCF believes that it was oversight to not also change the confidentiality of the YO consideration hearing. DCF proposes the following technical change to 33 V.S.A. §5283:

* * *

(c) Hearing procedure.

* * *

(2) ~~Hearings under subsection 5284(a) of this title shall be open to the public.~~ All ~~other~~ youthful offender proceedings shall be confidential.

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5. Finally, DCF is recommending a technical correction to be added to this bill as a new section. This proposed change is an amendment to 33 V.S.A. §5112 clarifying that youth age 18 and over will not be appointed a guardian ad litem. This change is necessary now that YO is available for youth up to age 21 beginning in 2018. DCF's proposes the following language to be added to this bill:

33 V.S.A. §5112 is amended to read:

**§ 5112. Attorney and guardian ad litem for child**

(a) The Court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.

(b) The Court shall appoint a guardian ad litem for a child <u>under age 18</u> who is a party to a proceeding brought under the juvenile judicial proceedings chapters. In a delinquency proceeding, a parent, guardian, or custodian of the child may serve as a guardian ad litem for the child, providing his or her interests do not conflict with the interests of the child. The guardian ad litem appointed under this section shall not be a party to that proceeding or an employee or representative of such party.