

To: Chairman Lippert and members of the House Judiciary Committee

From: Bob Sheil, Juvenile Defender

Re: Testimony regarding S. 275, Extension of Youthful Offender Jurisdiction

Thank you all for seeking my office's input on S. 275

I'd like to begin my giving a brief history of statutes relating to Youthful Offender status. Going back for over 2 decades there has been an ongoing conversation about how to best address the issue of older minors and their interactions with the criminal justice system.

There were study committees in the 1990's regarding what would be the appropriate court in which to hear cases involving this population and if they were placed in custody, should it be in the custody of the Commissioner of DCF (then SRS) or the Commissioner of Corrections.

Finally in 1998 the Legislature amended the juvenile code to allow for youthful offender status to be an option for some minors charged in adult court (Criminal Division). At that time the original bill allowed for jurisdiction over those youth given youthful offender status to continue until the youth reached his or her 21st birthday. Then Governor Howard Dean made it known that in order to sign the bill the legislation would have to cap the jurisdictional age at 19 which was then incorporated into the bill as passed.

When the entire Juvenile Code was rewritten in 2008 and became effective Jan. 1, 2009 the upper age for jurisdiction over youthful offenders in the Family Division (juvenile court) was extended up to age 22 (33 V.S.A. § 5586(d)).

In 2011 the legislature again enacted legislation addressing the jurisdiction of youthful offenders. At that particular time the legislation was prompted by a single case from the southern part of the state that highlighted a quite rare so-called "loophole" in the jurisdiction scheme set up in statute. Specifically what occurred was that an incident came to light where a youth, whom I believe was 19 at the time, admitted in counseling that he, at the age of 15, had sexually offended against another youth. Under the 33 V.S.A. § 5204(a) the young man could not be charged in the Criminal Division because he was under the age of 16 at the time of the alleged offense. Also he could not be charged in Family Division (juvenile court) because at the time of his admission he was no longer a minor, i. e. under the age of 18.

To remedy that problem the Legislature enacted 33 V.S.A. § 5204a in 2011. This statute closed the loophole because it allows for a proceeding to be commenced in the Family Division against a defendant who has attained the age of 18 if:

(1) the petition alleges that the defendant, before attaining the age of 18, violated a crime listed in subsection 5204(a) of this title;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) The Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age (Emphasis added) and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the Court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the Court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) In making the determination required by subdivision (1)(D) of this subsection, the Court may consider, among other matters:

(A) The maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community.

(B) The extent and nature of the defendant's prior criminal record and record of delinquency.

(C) The nature of past treatment efforts and the nature of the defendant's response to them.

(D) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(E) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(F) Whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

My recollection is, at that point in time, the age of 23 was chosen in order to provide consistency with what was believed by the legislature to be the age that was already included in statute for youthful offender cases.

I believe last year someone in the Court Administrator's Office determined that there was an internal inconsistency in two statutes regarding the age at which youthful offender status ended. As I mentioned earlier 33 V.S.A. § 5286 (d) states the Family Division's jurisdiction can continue up to the age of 22. However, 33 V.S.A. 5204a (b)(2)(A) states that the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under 23 years of age. So, if the age in this section is 23 it is not consistent with the applicable provision in subchapter 5 of chapter 52 which states that jurisdiction can only continue up to the age of 22.

When this bill came before Senate Judiciary on Jan. 14th, it basically called for the opposite of what the bill that has been passed by the Senate and which you have before you now. Originally it called to amend §5286 (d) to raise the jurisdictional age for all youthful offender cases up to 23. What it does in its present form is to lower the jurisdictional age in § 52041 (b)(2))(A) to 22.

My office supported the bill in its original form because it has always believed that cases involving youth are better addressed in the Family Division rather than the Criminal Division. . A primary benefit of granting a young defendant Youthful Offender status is that his or her case will be handled in the Family Court and if a youth successfully complies with his or her juvenile probation and is successfully

discharged from that probation, that youth will not have an adult criminal record. As you are aware, having an adult criminal record has all sorts of repercussions for young adults and can create lifelong barriers for them.

In a survey of State's Attorneys funded by the Children and Family Council for Prevention Programs a few years ago, the main barrier that State's Attorneys identified as a reason to file charges regarding a 16 or 17 year old youth in Criminal Division rather than Family Division was that the jurisdiction over delinquents in the Family Division ended at age 18. Under the present Youthful Offender statute jurisdiction for that status may continue up to the age of 22. 33 V.S.A. § 5286(d).

Our office has always believed that raising the jurisdictional age for all youthful offenders may well encourage State's Attorney's and the Courts to be more inclined to grant Youthful Offender status to more youth. Doing so would allow them to not only access more appropriate services through juvenile as opposed to adult probation but to benefit from not having an adult criminal record. Consequently we were in strong support of this legislation in its original form. In the bill that the Senate passed and is now before you that is no longer the case.

Our office also strongly supported Sec. 3 of the original bill which would have amended 33 V.S.A. § 4904 to ensure the provision of appropriate transitional services to youth in order for them to become successful adults continues up until their 23rd birthday. It is extremely important to provide these necessary services to youth who have spent five years or more in DCF custody between the ages of 10 and 18. This provision has been stricken from the bill before you.

At the very least our position is that the statute be amended to continue to allow services up to the age of 23 for that very small number of youth who have been or may be granted youthful offender status under 33 V.S.A. §5204a. I believe this number is extremely small because being granted youthful offender status under this very specific set of circumstances will be extremely rare.

As I stated this morning in my testimony, our office would prefer that the jurisdictional age for all youthful offenders be raised to age 23 as appears that was the legislative intent when the original bill was passed in 1998. If that is not possible, we would offer the following amendment (highlighted section) :

(2) (A) The Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title, **except that notwithstanding any provision to the contrary, the Court's jurisdiction may extend up to the age of 23**, if the defendant is under 23 years of age and the Family Division:

Thank you. Any questions, please feel free to contact me.