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February 14, 2014

Mr. Charles Goodwin  
440 Rote 100  
Weston, VT 05161

RE: H-618 Bill To Give Juvenile Courts Exclusive Jurisdiction Over Those Under 18

Dear Mr. Goodwin,

I write to urge you to delay for a year enacting legislation which would vest jurisdiction in Family Court for those who are under 18. I request this for several reasons: most counties have recently adopted protocols which will result in more cases going to Juvenile Court; we don't know all of the stories behind the statistics you have been furnished by the Administrative Judge; having tried myself, I can assure you that it is nearly impossible to legislate discretion which will account for all situations; finally DCF is not in a position to manage 17 ½ year olds with severe offenses.

Many counties are adopting protocols which will reduce the number of 16 and 17 year olds in adult Court – I issued my protocol in August 2013 as part of my act 159 protocol. In addition to pushing most misdemeanors into Juvenile Court, I am pushing most property crime felonies that direction, unless we are dealing with a frequent flyer. The statistics which you have been furnished do not reflect recently implemented policies in counties like mine or in counties which are just issuing their protocols.

You really need to look behind the statistics. Cases take 2-6 months to resolve. Therefore I am guessing that most prosecutors are like me, and are hesitant to

file a 17 ½ year old in Juvenile Court because the person might be 2 months from his 18<sup>th</sup> birthday by the time the case is disposed of leaving no time for supervision. So I filed most people that age in Adult Court and on the less significant cases offered: diversion, a deferred sentence or Y.O. (Youthful Offender Status). It still spared them the taint of criminality. But since those 17 ½ or older are probably 25% of those in the two year age group you are looking at, there is a good reason why 25% of them are going to Adult Court. Most of us believe that DUI's, and most other major motor vehicle cases should go to Adult Court because it involves an adult activity. In terms of public safety I have serious reservations about giving 16 and 17 year olds a pass on their first DUI. I note that as with all non-listed offenses, if the person was under 21 and they can avoid committing a crime for two years they can get the record sealed as though it were a juvenile case pursuant to 33 VSA §5119(g). So it is not as though all these kids will remain with records.

I have reconsidered the practice, but on lower end cases where we did not want to burden DCF or DOC with probation and we wanted the case to go to diversion, we would file it in Adult Court and say diversion or \$500 fine hoping to push them into diversion (we can't do fines in Juvenile Court). Unfortunately many kids know fines are optional, and they don't care about a record so they just take the fine. Again, as above, they can get the record sealed under §5119. When I add all these cases together I can see why half were filed in Adult Court.

You can't legislate discretion – I can think of several cases that I sent the Y.O. route which would show up as being filed in Adult Court. I think I have done 5 Y.O.'s. I will describe two. One young man had a mother who worked at a mom and pop general store. He knew his mother's code for the cash register. He had been stealing \$20.00 - \$100.00 per day for over a year. This was not a spur of the moment decision. It was a calculated plan which he had plenty of time to reflect over and then repeated it the next day. Another fellow had broken into a house up in Washington County and was on juvenile probation. While on juvenile probation he stole a car and crashed it. He got a deferred for that. While under both forms of supervision he broke into a car and stole a purse and a camera, but it was under \$900.00 so it was a misdemeanor. In both cases I charge in Criminal Court and offered Y.O. treatment. Please don't take that option away from me.

My final example is M.F. This young man came up to Springfield Vermont with his associates who are referred to as the "Jersey Boys." They themselves as well as our street intelligence confirm that they are our local subsidiary of the Bloods out of Jersey City. New Jersey does not have felonies and misdemeanors but that which would constitute a felony is an open record even if a juvenile proceeding. Prior to joining the Springfield Vermont branch, this young man's record includes: dealing drugs within 500 feet of school, possession of a gun while committing a felony, possession of a weapon for an unlawful purpose. Up here he was arrested for trafficking heroin. We charged it in Adult Court. There is nothing a nice save the world type social worker from DCF will be able to do for this young

man. It is sad. I am sure he came from a terrible background in Jersey City. But he is peddling poison to our citizens. You may disagree with my discretion in these cases. But trying to legislate something different is fraught with peril.

DCF is not in a position to handle the more serious 17 year old offenders – I don't know if you have heard from DCF. But they are maxed out. Most kids in the juvenile system know it is a paper tiger. They will say "what are you going to do, send me to Woodside?" It is not something which some of the ones already in the system are afraid of. I have some great social workers in my district. They say things like "let me try to save him." I don't want to inundate them with a slew of offenders that they have no ability to manage. Y.O. is a good option because it extends the jurisdiction of the Family Court but allows supervision to be turned over to corrections at 18. This is an underutilized option.

In sum, there are a lot of cases which there have been good reason to file in Criminal Court. Most of the offenders can get the record sealed under §5119(g) if they behave for two years anyway. We don't know how many of adult cases resulted in diversion, deferred, or Y.O. status. And finally, there is a move by almost all counties to adopt protocols. It is just that they are proceeding at different speeds.

I would like to testify, but I am going with my son William to Florida to visit my parents next week.

I appreciate your consideration.

Sincerely



Michael Kainen  
State's Attorney

## COMPREHENSIVE WINDSOR COUNTY JUVENILE CITATION PROTOCOL

### **1. Timing and Content of Citation:**

- a. Law Enforcement shall hand the juvenile a citation as near as possible to the date of offense, taking into consideration reasonable time necessary for the investigation.
- b. The citation shall be issued for a Monday morning at 8:30 a.m., roughly thirty days from the date the juvenile was handed the citation. For example, if the officer issues a citation on Wednesday, March 6, 2013 the appearance date for the juvenile would be Monday, April 8<sup>th</sup> 2013. (An easy way to calculate this would be to go to the same day of the next month, which above would be April 6, and then find the first Monday following that date.)
- c. The citation shall be issued for the appearance time of 8:30 a.m.
- d. Law Enforcement shall forward all necessary paperwork to the State's Attorney's Office no later than 10 business days from the date the juvenile was handed the citation.
- e. Along with the citation, Law Enforcement should provide the juvenile with a copy of the Notice of Risk Assessment. Sign and date the bottom of the form, and make sure to send a copy to Court Diversion. You should not provide the notice in the event of a flash cite or custody. (see Appendix A)

### **2. Flash Cites**

- a. When a juvenile poses a danger to himself/herself or others, or if Law Enforcement believes that a flash cite is otherwise appropriate, Law Enforcement should contact the State's Attorney's Office to discuss whether custody is appropriate.

Micheal Kainen

Cell: (802) 359-2303 OR Home: (802) 295-9117

Rhonda Sheffield

Home: (603) 795-2655

- b. If the State's Attorney and Law Enforcement determine that a flash cite is appropriate, Law Enforcement will issue the juvenile citation for 1:00 p.m. on the next day that the Family Division is in session.
- c. Law Enforcement shall get all of the paperwork for the flash cite to the State's Attorney's Office by 8:30 a.m. of the date of the flash cite.

d. The State's Attorney's Office shall contact DCF if DCF's presence at the preliminary hearing is deemed necessary.

**3. Documents to be Submitted by Law Enforcement**

- a. Standard case documents (affidavit, evidence and witness lists, etc.)
- b. Form 101 (see Appendix B)

**4. Choosing the Appropriate Court**

- a. For all misdemeanor offenses (excluding motor vehicle offenses, serious assaults; stalking, and assaults on Law Enforcement Officers), juveniles under the age of 18 years old should be cited into juvenile (rather than adult) court.

i. EXCEPTIONS:

- 1. If the Officer believes that a citation to adult court is more appropriate (given the juvenile's history, other pending adult charges, the nature of the particular offense, etc.), the Officer should contact the State's Attorney's Office, which will authorize an adult court citation.
- 2. If the Officer believes that it is appropriate to refer the juvenile directly to the Community Justice Center, or other local reparative board, the Officer should do so.

- b. For serious assaults, stalking, assaults on Law Enforcement Officers, major motor vehicle offenses (DUI, GNO, ATE, NEG OP), and most felonies, 16 and 17 year-olds should generally be cited into adult court, while juveniles under 16 years old should still be cited into juvenile court.

- i. In the event that you are unsure, Law Enforcement is encouraged to discuss these cases with the State's Attorney's Office prior to citing these juveniles, in order to determine the most appropriate citation. There have been a couple of child on parent and sibling on sibling domestics where Officers have called me, and we have determined that there were better services available in juvenile court. For more serious cases, the State can offer Youthful Offender status in adult court.

**5. YASI in the Event of a Flash Cite or Custody**

- a. In the event of a custody or flash cite, the juvenile will be asked to contact DCF to arrange a YASI as soon as possible.

Dept Case # \_\_\_\_\_

## NOTICE TO REPORT

### FOR A FREE COURT DIVERSION YOUTH ASSESSMENT

You have been given a citation from a police officer to appear in Court. You must be at the Court on the day and time stated on the citation. If you do not go to Court on the specified day and time, a judge can order that you be picked up by a police officer and brought to Court. You may be penalized for not showing up on your own.

However, if you would like to be considered for an alternative to the formal court process, you must contact a Case Manager (see "Who to Contact" below) **within 7 calendar days of this notice** to sign up for a free youth assessment. The assessment must be done before the day you are scheduled to be at court.

**Purpose** The purpose of the youth assessment is to determine the best way to support you. If you qualify, you could be referred to the local community justice center or court diversion program instead of Court.

**Confidentiality** The State's Attorney's Office has agreed that anything disclosed during this youth assessment will not be used against you. The only information that is shared with the State's Attorney is whether or not you qualify for an alternative to Court.

**How Much Will This Cost?** The youth assessment is free.

**How Much Time Will This Take?** The youth assessment takes approximately 30-45 minutes.

**Who to Contact:** Rick Wesson, Case Manager  
Hartford District Office  
Office: (802) 295-5078, ext 16  
Cell: (603) 667-5253  
Email: rick@vcdp.org

Alecia Armstrong, Case Manager  
Springfield District Office  
Office: (802) 295-5078, ext 15  
Cell: (802) 356-4712  
Email: alecia@vcdp.org

**All Individuals under the age of 18 MUST BE accompanied by a parent or legal guardian.**

Youth's Name: _____	DOB: _____
Youth's Address: _____	Phone #: _____
Parent's/ Guardian's Name: _____	Phone #: _____
Offense(s) for which cited: _____	

Officer's Name	Department	Radio #	Date
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White Copy: DEFENDANT    Yellow Copy: CASE  
 Photocopy     mailed     faxed     emailed     delivered to VCDP on \_\_\_\_\_