A Study of Vermont State's Attorneys' Practices and Perspectives Regarding 16 and 17 Year Old Youth

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EXECUTIVE SUMMARY

In 2011, a study of Vermont State's Attorneys' perspectives on court jurisdiction for 16 and 17 year old youth was commissioned by the Juvenile Jurisdiction Task Force of the Vermont Children and Family Council for Prevention Programs.[1] The Juvenile Jurisdiction Task Force was interested in understanding both the State's Attorneys' decision-making and practices regarding charging 16 and 17 year olds as juveniles or adults and their polices and practices regarding referring youth in that age group to Court Diversion. In that study, the State's Attorneys identified a number of barriers to filing in juvenile court.

At the time of that study, State's Attorneys in several counties were contemplating making changes in policy and practice regarding 16 and 17 year olds who have been charged with violating the law. Following the publication of the report, the Vermont General Assembly enacted Act 159 in 2012 in an effort to address some of the barriers to filing in juvenile court that had been identified by the State's Attorneys.

In 2014, the Juvenile Jurisdiction Task Force asked Erica Garfin Consulting to conduct this follow-up study to learn about changes in policy and practice that have occurred in the two and a half years since the initial study was conducted. The new study also includes additional focus on referrals to programs that offer other alternatives to court.

FINDINGS

1. The number of counties that have formal policies and protocols that give explicit direction to law enforcement about citing 16 and 17 year olds into juvenile or adult court has more than tripled since 2011. There has also been an increase in the number of counties that have informal (unwritten) policies regarding jurisdiction. Few counties make decisions on a case by case basis.

2. State's Attorneys are the primary agents in developing their counties' policies and protocols regarding 16 and 17 year old youth. Handling cases involving 16 and 17 year old youth requires specialized expertise, particularly in the juvenile system; responsibility for those cases is held by the State's Attorney and/or a designated attorney in each office.

3. Act 159 addressed a number of the obstacles to charging 16 and 17 year old youth in juvenile court. However, State's Attorneys still describe a number of limitations to the juvenile court system. With the exception of the age ceiling in the juvenile system, those limitations generally do not have an impact on decisions about whether to file in juvenile or adult court.

[1] Erica Garfin Consulting. *A Study of Vermont State's Attorneys Perspectives on Juvenile Jurisdiction*. (November 21, 2011.)

4. State's Attorneys' attitudes about Youthful Offender are more positive than in 2011 and their use of the Youthful Offender option has increased.

5. The majority of counties now have policies for notifying 16 and 17 year old youth of the opportunity to have a risk and needs screening prior to a preliminary hearing in juvenile court, as required by Act 159. Policies have been implemented with varying degrees of success.

6. Referrals to court alternative programs have increased as State's Attorneys' philosophies evolve and as the availability of alternative options has grown.

7. For the most part, resource issues rather than issues with the law are the most significant impediments to accomplishing the State's Attorneys' goals of ensuring public safety and achieving the best long term outcomes for 16 and 17 year old youth.

CONCLUSIONS AND RECOMMENDATIONS

The study concludes that there have been a number of constructive developments in the two and a half years since the publication of the 2011 report on Vermont State's Attorneys' perspectives on jurisdiction and referrals for 16 and 17 year old youth. At the same time, the study finds that State's Attorneys report that there are still a number of impediments to accomplishing their overarching goals of ensuring public safety and achieving the best long term outcomes for 16 and 17 year old youth. Most of these point to the need for additional resources rather than changes in the law.

The report ends with a recommendation that the study's findings be used as the basis for additional research that employs quantitative data analysis to gain more information about filing and referral practices and the outcomes correlated with those practices.

I. INTRODUCTION

In 2011, a study of Vermont State's Attorneys' perspectives on court jurisdiction for 16 and 17 year old youth was commissioned by the Juvenile Jurisdiction Task Force of the Vermont Children and Family Council for Prevention Programs.[2] The Juvenile Jurisdiction Task Force was interested in understanding both the State's Attorneys' decision-making and practices regarding charging 16 and 17 year olds as juveniles or adults and their polices and practices regarding referring youth in that age group to Court Diversion. In that study, the State's Attorneys identified a number of barriers to filing in juvenile court.

At the time of that study, State's Attorneys in several counties were contemplating making changes in policy and practice regarding 16 and 17 year olds who have been charged with violating the law. Following the publication of the report, the Vermont General Assembly enacted Act 159 in 2012 in an effort to address some of the barriers to filing in juvenile court that had been identified by the State's Attorneys.

In 2014, the Juvenile Jurisdiction Task Force asked Erica Garfin Consulting to conduct this follow-up study to learn about changes in policy and practice that have occurred in the two and a half years since the initial study was conducted. The new study also includes additional focus on referrals to programs that offer other alternatives to court.

Acknowledgements

This study could not have gone forward without the full participation of Vermont's State's Attorneys and in some cases their Deputies, who managed to find time in their demanding schedules to be interviewed again this year. Bram Kranichfeld of the Department of State's Attorneys and Sheriffs was instrumental in making sure the State's Attorneys were informed about the study's purpose and methodology. As was the case in 2011, Willa Farrell and Jon Kidde of the Vermont Association of Court Diversion Programs played a critical role in clarifying the goals and areas of focus for the study and provided important context and background.

[2] Erica Garfin Consulting. *A Study of Vermont State's Attorneys' Perspectives on Juvenile Jurisdiction*. (November 21, 2011.) http://humanservices.vermont.gov/boards-committees/cfcpp/publications/jurisdiction-court-and-supervisory-jurisdiction-of-sixteen-and-seventeen-year-old-youth-accused-and-convicted/a-study-of-vermont-states-attorneys-perspectives-on-juvenile-jurisdiction/view

II. BACKGROUND

The age of majority in Vermont is 18. Unlike some other states, Vermont does not automatically prosecute 16 and 17 year olds as juveniles or adults. Vermont gives State's Attorneys the discretionary authority to decide whether a 16 or 17 year old youth will be prosecuted in juvenile court (Family Division of the Superior Court) or adult court (Criminal Division of the Superior Court). The decision to refer a 16 or 17 year old youth to Court Diversion also rests with the State's Attorneys.

Findings of the 2011 juvenile jurisdiction study

The 2011 juvenile jurisdiction study found the following:

1. Only two of the State's Attorneys' offices had a formal policy or protocol that guided decisions regarding court jurisdiction for 16 and 17 year old youth. Less than half of the offices had informal policies regarding juvenile jurisdiction. Roughly half of the offices made decisions on a case by case basis.

2. State's Attorneys identified advantages and disadvantages to both the juvenile and adult systems.

3. Opinions about Youthful Offender Status varied widely among the State's Attorneys, from strongly positive to strongly negative.

4. For the most part, State's Attorneys were motivated by the dual goals of achieving the best long term outcome for the young person and ensuring public safety. Their approaches to achieving those goals are strategic and varied.

5. The State's Attorneys valued Court Diversion as a mechanism for diverting 16 and 17 year old youth from the court process. Once a youth had been found to meet the county-specific eligibility criteria, State's Attorneys made referral decisions on a case by case basis.

6. There was strong resistance among State's Attorneys to the possibility of a statutory requirement to charge 16 and 17 year olds in juvenile court.

7. The State's Attorneys proposed a variety of fixes for existing problems with the juvenile court system.

The study concluded:

> "The information gained from the interviews with Vermont's State's Attorneys shows that their perspectives and practices vary widely. Two findings, in particular, have important implications for policy regarding juvenile jurisdiction in Vermont. (1) State's Attorneys perceive there to be a number of disincentives for charging 16 and 17 year old youth in juvenile court, and two are especially significant: the end of juvenile

> jurisdiction at age 18 and the difficulty of transferring cases from juvenile to adult court. (2) There is strong resistance among the State's Attorneys to a legislated mandate to charge 16 and 17 year olds in juvenile court. Removal of the obstacles that currently exist in the juvenile court process is likely to result in an increase in the number of cases that are filed in juvenile court."

Act 159

Act 159, an act relating to jurisdiction of delinquency proceedings, went into effect on July 1, 2012. It made the following changes to the delinquency statutes[3]:

1. Permits the Family Division to extend jurisdiction over a child who has been adjudicated delinquent up until six months after the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense. Previously, the Family Division's jurisdiction ended when the child turned 18.

2. Permits the State's Attorney to file a motion to transfer misdemeanor and certain nonviolent felony delinquency proceedings from the Family Division to the Criminal Division of the Superior Court if the child is 16 or 17 years of age; previously, a motion to transfer could only be filed for children who had committed serious felonies. The motion may be filed at any time prior to adjudication of the case on the merits; previously, a motion to transfer had to be filed within 10 days after the delinquency petition was filed.

3. Requires the child in a delinquency proceeding to be given an opportunity to have a risk and needs screening before the preliminary hearing.

4. Permits the disposition case plan to be waived if the juvenile enters an admission to the offense.

5. Permits a court to refer a child adjudicated delinquent directly to a community-based provider rather than placing the child on probation.

[3] Adapted from: Vermont Legislative Council. *Summary of the Acts and Resolves of the 2012 General Assembly.*

III. STUDY DESIGN

This study utilizes a qualitative research methodology. Unlike quantitative research, which uses numbers as the basis for analysis, qualitative research explores issues by looking at reasons, opinions, and motivations to gain an understanding of the *why* and *how* of decision-making and other practices or behaviors.

Structured telephone-based interviews were conducted with State's Attorneys in May and June 2014. Thirteen (13) State's Attorneys participated in the interviews. In one county, a Deputy with responsibility for juvenile matters took the place of the State's Attorney. In four counties, Deputy State's Attorneys with significant responsibility for juvenile cases also participated in the interviews. With the sole exception of Windsor county, all of the current State's Attorneys were in office at the time of the 2011 study.

Study Goals

The current study has three goals:

1. To learn about changes in juvenile jurisdiction and referral policy and practice by State's Attorneys that have occurred since the passage of Act 159.

2. To understand why change has or has not occurred.

3. To learn how State's Attorneys take into consideration the dual goals of ensuring public safety and achieving the best long term outcome for each youth in developing policies and implementing policies in specific cases.

Research Questions

The study was designed to address the following research questions (i.e., areas of focus) regarding court jurisdiction and referrals to court alternative programs for 16 and 17 year old youth:

1. Do the State's Attorneys' offices have and use formal or informal policies regarding juvenile jurisdiction? How often are exceptions made to these policies?

2. Who makes decisions in each State's Attorney's office regarding 16 and 17 year old youth?

3. What factors (case-specific or systemic) influence filing decisions, other than those identified in the 2011 study?

4. What are the current obstacles identified by State's Attorneys to charging 16 and 17 year old youth in the Family Division?

5. Act 159 mandates that prior to a Preliminary Hearing in the Family Division, all youth will be given an opportunity to have a risk and needs screening. How are State's Attorneys using the findings from those screenings?

6. How do State's Attorneys view the Youthful Offender option?

7. Do the State's Attorneys' offices have and use formal policies regarding referrals of 16 and 17 year old youth to court alternative programs (such as pre-charge programs, Court Diversion, or community-based post-adjudication programs such as BARJ and programs operated by Community Justice Centers), and what are those policies? How often are exceptions made to these policies?

8. What factors (case-specific or systemic) influence decisions to refer youth to court alternatives, other than those identified in the 2011 study?

9. What are the obstacles identified by State's Attorneys to referring 16 and 17 year old youth to court alternative programs?

10. What changes do State's Attorneys identify as necessary to accomplish the dual goals of ensuring public safety and achieving the best long term outcome for each youth?
    a. on the local level
    b. to state law

IV. FINDINGS

1. State's Attorneys' Policies and Practices

Finding: **The number of counties that have formal policies and protocols that give explicit direction to law enforcement about citing 16 and 17 year olds into juvenile or adult court has more than tripled since 2011. There has also been an increase in the number of counties that have informal (unwritten) policies regarding jurisdiction. Few counties make decisions on a case by case basis.**

Discussion

Seven counties (half of the state's 14 counties) now have formal policies that give explicit direction to law enforcement about citing 16 and 17 year olds into juvenile or adult court. This is a significant increase from 2011, when only Caledonia and Bennington counties had formal, written protocols. Six of the seven protocols instruct law enforcement to cite individuals into juvenile court, and one specifies citation into adult court. While Bennington, Caledonia, Chittenden, and Windsor county protocols include

all 16 and 17 year olds, Addison, Lamoille, and Windham protocols for citing into juvenile court extend only through age 17½. All of the protocols instruct law enforcement to contact the State's Attorney's office if they believe a citation to the other jurisdiction is more appropriate. Five of the policies include an additional protocol that instructs law enforcement to issue a notice of the opportunity to participate in a risk assessment at the time of the citation.

Table 1. Formal policies regarding citing 16 and 17 year old youth

County	Age	Court jurisdiction	Covered offenses	Exclusions	Notice of Risk Assessment
Addison	16-17½	juvenile	misdemeanors	motor vehicle offenses, partner domestic assaults, stalking, assaults on law enforcement officers, listed crimes[4]	
Bennington	All 16+17	adult	all offenses		
Caledonia	All 16+17	juvenile	all offenses	sex crimes, serious domestic assaults, major motor vehicle offenses, listed crimes	X
Chittenden	All 16+17	juvenile	misdemeanors	motor vehicle offenses, partner domestic assaults, stalking, assaults on law enforcement officers	X
Lamoille	16-17½	juvenile	all offenses	major motor vehicle offenses, fish and game offenses, listed crimes	X
Windham	16-17½	juvenile	all offenses	major motor vehicle offenses, fish and game offenses, listed crimes	X
Windsor	All 16+17	juvenile	misdemeanors	Motor vehicle offenses, serious assaults, stalking, assaults on law enforcement officers	X

Orange County is in the unique position of being served by law enforcement agencies from the three neighboring counties of Caledonia, Windsor, and Washington. Two of those counties have formal protocols that instruct their officers to cite 16 and 17

[4] Crimes listed in 13 V.S.A. §5301(7)

year olds into juvenile court. In order to avoid the existence of competing protocols, the Orange County State's Attorney has opted to allow law enforcement officers to follow those protocols when citing Orange County youth.

Four of the remaining counties have unwritten, informal policies or "default positions." The informal policy in three of those counties is to cite 16 and 17 year olds into adult court while the fourth cites into juvenile court. State's Attorneys in the two remaining counties make decisions on a case by case basis, with one noting some preference for adult court. This is a noteworthy change from 2011, when roughly half of the offices reported making decisions on a case by case basis. None of the counties with a previous policy or practice of citing into adult court made a shift to juvenile court.

State's Attorneys were asked what led to the creation of their policies or changes in practice. Although it would not be accurate to say that their responses were consistent enough to be identified as themes, several responses occurred with some frequency:

- Provisions of Act 159 reinforced an existing preference for juvenile court and led them to codify and clarify their practices in a formal policy.
- Provisions of Act 159 simplified and enhanced juvenile court process.
- Experiences of other State's Attorneys in creating formal policies led them to create their own.
- Research on adolescent brain development has found that the human brain is not fully mature until the early 20s.[5] This awareness of "brain science" led one State's Attorney to state, "So I believe we now look at almost all cases involving minors and say, 'Why shouldn't we bring this as a juvenile case?'"
- A permanent "Google record" continues to exist on the Internet even after a criminal record is sealed or expunged.
- Changes to the Youthful Offender statute have made it a more easily used and effective tool.

An interview question about how frequently exceptions were made to their formal or informal policies was not applicable in counties without policies or where policies were too new to provide experience. Those who were able to respond provided the following information:

- Adult court policy exceptions made:
  - rarely (1 response)
  - fairly often (1)

[5] For information about adolescent brain development, see Ortiz, Adam. *Adolescence, Brain Development and Legal Culpability*. American Bar Association, Juvenile Justice Center (January 2004). http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf

- Juvenile court policy exceptions made:
  - rarely (1)
  - occasionally (2)
  - rarely made exceptions to juvenile citation; more frequently made exceptions with offenses that their policy instructed to cite in adult court (1)

For the most part, the factors that result in exceptions to policies and influence filing decisions track those factors that were identified in the 2011 study and will not be discussed in detail here.

The following case-specific considerations were cited most frequently in 2014:

- The youth's history, including history of juvenile court failure.
- Violence or threat of violence; concern that the juvenile system lacks adequate protection of public safety.
- Other pending charges.
- Multiple or repeat offenses.
- Need for mental health or substance abuse treatment or other supports not available through the adult system.
- Law enforcement recommendations based on knowledge of child and family circumstances.
- Age of the offender.

As was the case in the 2011 study, it would be a mistake to put too much emphasis on the jurisdiction decision alone without looking at both the reasoning behind the decision and the strategy that will follow the assignment to one court or another. For the most part, State's Attorney's continue to be motivated by the dual goals of achieving the best long term outcome for the young person and ensuring public safety. As in 2011, the decision about whether to charge as a juvenile or adult is often the first step in a nuanced strategy. According to the State's Attorneys with formal or informal policies directing citation into adult court, the majority of those cases do not continue straight through the adult process. For more serious offenses that are filed in adult court, they may use Youthful Offender or deferred sentencing. State's Attorneys rely heavily on referrals to Court Diversion from both juvenile and adult court.

2. Roles of State's Attorneys and Deputy State's Attorneys

Finding: **State's Attorneys are the primary agents in developing their counties' policies and protocols regarding 16 and 17 year old youth. Handling cases involving 16 and 17 year old youth requires specialized expertise, particularly in the juvenile system; responsibility for those cases is held by the State's Attorney and/or a designated attorney in each office.**

Discussion

For the most part, the counties' formal and informal policies regarding 16 and 17 year old youth have been developed by the State's Attorneys, sometimes in consultation with Deputies who have specialized juvenile expertise. In the few counties where a Deputy has significant or total responsibility for juvenile matters, those individuals play a greater role in matters of policy.

Because the juvenile system is complex, handling juvenile cases effectively requires intimate knowledge of the juvenile court system and alternative strategies. Responsibility for handling cases involving 16 and 17 year old youth falls into one of three models in Vermont's 14 counties.

- Responsibility for all cases involving 16 and 17 year old youth *in both juvenile and adult jurisdictions* is handled by a *single individual*. This is the practice in six counties. In four of these counties, two of which are small offices without Deputies, it is the State's Attorney who is the juvenile prosecutor, and in two counties it is a Deputy.
- Responsibility for all cases involving both 16 and 17 year old youth *in both juvenile and adult jurisdictions* is *shared within the office* between the State's Attorney and a designated Deputy. This is the practice in two counties.
- All cases involving 16 and 17 year olds in *juvenile court* are assigned to a *single Deputy* who has developed that expertise. This is the practice in six counties. In those offices, cases in adult court may be assigned to that Deputy or another prosecutor in the office (in smaller offices, there may be only one or two Deputies).

In the majority of offices, it is the State's Attorney who makes filing and referral decisions for 16 and 17 year olds, including exceptions to their policies. In one county, a Deputy who holds the position of juvenile prosecutor has that responsibility. In a few counties, Deputies with juvenile expertise make exceptions in consultation with the State's Attorney. In two counties, exceptions can be made by either the State's Attorney or the Deputy.

State's Attorneys use a variety of methods to keep law enforcement apprised of their policies and to give them direction about citing 16 and 17 year olds. In addition to written protocols, these include monthly meetings with Chiefs, annual trainings, listservs, and e-mail communications. Because law enforcement officers know to contact the State's Attorneys with any questions about citing into a particular court, it is relatively uncommon for State's Attorneys to ask them to re-cite in a jurisdiction different from the one in the original citation. Such changes are more likely to happen for adult citations than juvenile.

Law enforcement officers may make referrals to pre-charge programs at their own discretion in counties where such programs exist.

3. Limitations of the juvenile court system

Finding: **Act 159 addressed a number of the obstacles to charging 16 and 17 year old youth in juvenile court. However, State's Attorneys still describe a number of limitations to the juvenile court system. With the exception of the age ceiling in the juvenile system, those limitations generally do not have an impact on decisions about whether to file in juvenile or adult court.**

Discussion

Some of the systemic issues identified in the 2011 study were addressed by Act 159. For the most part, the limitations of the juvenile court system that State's Attorneys described in 2014 are consistent with those that were identified in 2011. With the exception of the age cut-off, the limitations they identified in 2014 were not generally characterized by the State's Attorneys as having an impact upon where they decide to file cases.

Age ceiling

The issue of offender age continues to be a prominent concern for a number of the State's Attorneys despite a provision in Act 159 that raises the age of juvenile court jurisdiction to 18½ for non-violent misdemeanors that are committed by a 17 (not 16) year old. This was intended to address the fact that many older youth "aged out" of the juvenile system on their 18th birthdays before they had time to complete meaningful rehabilitation, treatment, and restitution. This was compounded by the fact that the juvenile court process itself is lengthy and uses up some of the available time before an older youth ages out of the system. In the 2011 study, State's Attorneys identified this as a significant disincentive to charging older youth as juveniles, particularly those who were 17 at the time of the offense.

Opinions about the usefulness of extending juvenile jurisdiction to 18½ were mixed. A few of the State's Attorneys felt that extending the age limit by six months was adequate. Some noted that that it does make a difference with lower level offenses committed by 17½ year old youth. However, half of the State's Attorneys felt strongly that extending juvenile jurisdiction to 18½ has not adequately addressed the issue for youth who require more intensive services and a lengthy period of supervision. Protocols that call for citing into juvenile court only up to age 17½ rather than up to the 18th birthday reflect that concern. One State's Attorney commented that there is no way to predict "how long things are going to take when you start a case" in juvenile court (e.g., getting into court, assessment, juvenile court process, time needed to address the youth's needs). The fact that the lengthy juvenile court process uses up some of the available time before the youth ages out of the juvenile system continues to be an issue that may come into play for some when citing older youth.

One State's Attorney expressed frustration that the age extension could not be used for youth who commit offenses at age 16 and need a long period of supervision.

As noted above, when juveniles age out of the system, supervision and services end abruptly with no mechanism for continuation. Youthful Offender provides for a continuum of services up to age 22 and the expungement of the record upon successful completion of probation, but those cases must originate in adult court.

Two State's Attorneys expressed concern about the lack of accountability or "teeth" in the juvenile system. This issue may result in charging some older youth in adult court. One State's Attorney, whose formal policy and stated preference is to keep all 16 and 17 year olds in the juvenile system, described the problem not as the individual's age but as the absence of a continuum of jurisdiction and the hard and fast cut-off *at any age* of juvenile jurisdiction, supervision, and services. This was characterized as an arbitrary cut-off with "no significant stick" because juveniles do not take probation seriously when they know it will end soon with no ramifications (i.e., threat of jail) if they do not succeed. The other State's Attorney, whose informal policy is to charge all 16 and 17 year olds in adult court, stated, "There has been a change in philosophy [in Vermont] over the years to reduce prejudice against youth who have a permanent record. The key is how to hold them accountable."

One State's Attorney pointed out a conundrum that can make it impossible to take advantage of the 18½ age extension to charge older youth in "sexting"cases (i.e., sending sexually explicit messages by cell phone or other electronic device). Vermont considers sexting to be an offense only when it is committed by individuals under the age of 18 (i.e., it is not a crime for adults) and requires that sexting cases be filed in juvenile court.[6] However, it can take considerable time to evaluate electronic devices for evidence that sexting has taken place. If the offense was committed at age 17 but the individual has turned 18 while the investigation is taking place, there is no way to charge the individual with the offense.

Court access

Limited juvenile court access continues to be characterized as an unhappy fact of life in smaller counties. In counties where juvenile court citation days occur only one or two days each month, this can cause significant delays and, as one State's Attorney said, "It doesn't have the same impact if you call the juvenile in three weeks later—the punch has been lost. If you have to wait three weeks for a substance abuse assessment, what have they been doing in the meantime?" In general, however, it was not identified as a factor that would influence an individual filing decision.

Along those lines, State's Attorneys in a few counties noted that it would be very helpful to be able to have a speedy hearing for specific kinds of juvenile cases in order to impose immediate conditions of release and protect public safety. While the option to do

[6] 13 V.S.A. § 2802(b)

a "flash cite" (i.e., a citation to appear in court the following day) is apparently unavailable in some counties, several other counties' protocols do provide instructions to law enforcement regarding flash cites to juvenile court.

Department for Children and Families' ability to serve older youth

In the words of the 2011 study, State's Attorneys identified one of the main advantages of the juvenile system over the adult system as follows: "It is designed to address underlying problems and behaviors at an early age through the provision of services, supports, treatment, and supervision. These services can be especially important for youth with mental health, drug, and alcohol issues." This sentiment was echoed in 2014, and the importance of the Department for Children and Family's (DCF) more therapeutic approach to rehabilitation was further reinforced for some of the State's Attorneys because of their increased awareness of adolescent brain development.

However, in 2014 a number of the State's Attorneys expressed significant concern about DCF's ability to meet the needs of older youth. Their concerns were not voiced as criticism of DCF staff but as comments about the context within which the caseworkers function. It should be noted that these concerns were not raised in all parts of the state; however, there was general acknowledgement that DCF staff are hard-working but seriously overtaxed and overburdened by an under-resourced DCF system.

One frequent comment was that DCF is not necessarily designed to serve older youth and that caseworkers have fewer tools at their disposal and less to offer youth as they get older.

Some State's Attorneys perceive that juvenile cases have lower priority in triage than those of younger children and that the demands of the caseworkers' other responsibilities takes away from the time they have to work with and follow through with older youth.

Some State's Attorneys noted that the delinquency side of DCF is ill-equipped to deal with savvy juveniles who understand that there are few consequences for non-compliance in the juvenile system and do not take probation seriously. One State's Attorney felt that DCF caseworkers are social workers who are trained child welfare workers but do not receive adequate training or support to serve as probation officers as well. Another State's Attorney who had worked both in a county that had a designated juvenile probation officer and in a county where that responsibility was spread among caseworkers observed that an experienced juvenile probation officer can offer a level of support and contact that cannot be expected of other caseworkers.

It should also be noted that there is some lack of clarity and/or inconsistency of interpretation about what the extension of juvenile jurisdiction to 18½ actually means. The statute reads: "Jurisdiction over a child who has been adjudicated delinquent *may* be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17

years old when he or she committed the offense." *(emphasis added)*. Although this question was not part of the original interview script, it was asked in some of the interviews after one State's Attorney volunteered that the local DCF district office had stated definitively that DCF probation and services still end at age 18. When asked for their understanding of the law, two other State's Attorneys said that DCF probation and services do continue, while other State's Attorneys who had not received any guidance from their DCF district offices said either that they assumed probation and services continue or that they did not know.

4. Youthful Offender

Finding: **State's Attorneys' attitudes about Youthful Offender are more positive than in 2011 and their use of the Youthful Offender option has increased.**

Discussion

Vermont's Youthful Offender Statute[7] (formerly known as blended sentencing) allows a youth to be charged in adult court and then have the case transferred to juvenile court for disposition. Supervision of Youthful Offenders in the juvenile system may continue to age 22, during which time they will have access to DCF services and supports. Upon successful completion of disposition, the case is dismissed in juvenile court and expunged in adult court.

State's Attorneys' attitudes about Youthful Offender have changed in the period since the first study, with a notable shift towards the positive. In 2011, their opinions about Youthful Offender varied widely, from strongly positive to strongly negative. In 2014, the majority of State's Attorneys find it to be a very useful tool, with usage ranging from "in some cases" to "a lot." According to some, the process has matured, making it easier to use. One State's Attorney described it as an opportunity to have the supervision and protection of juvenile system but with a measure of accountability and opportunity to have a clear record. Some of the State's Attorneys noted that they tend it to use it for more serious offenders.

[7] 33 V.S.A. §§ 5204, 5104(b), 5285

5. Risk and needs screening

Finding: **The majority of counties now have policies for notifying 16 and 17 year old youth of the opportunity to have a risk and needs screening prior to a preliminary hearing in juvenile court, as required by Act 159. Policies have been implemented with varying degrees of success.**

Discussion

Act 159 mandates that all youth be given an opportunity to have a risk and needs screening prior to the preliminary hearing in juvenile court. The risk assessment tool used in Vermont is the YASI™ pre-screen (Youth Assessment Screening Instrument). The YASI™ is a research-based tool for assessing needs, risk factors for re-offense, and protective factors (i.e., strengths) in youth. Use of the pre-screen predated Act 159 in some counties.

Nine of the counties now have policies for notifying the juvenile and family of the opportunity to have a risk assessment. In five of those counties, law enforcement is directed to hand a notice about the risk assessment to the juvenile/family along with the citation to report to juvenile court. In two counties, the State's Attorney notifies the family by mail. In two counties, the community-based screening agency notifies the family by mail.

In Vermont's other five counties, the pre-screen either is not happening systematically or is not happening at all. The reasons given for this were confusion about who was responsible for making it happen (the statute is silent on question of responsibility) and defense bar opposition.

Although the State's Attorneys did not have data about the number of juveniles who were opting to participate in the pre-screen, their rough estimates ranged from very few to almost 100%. Lack of parental cooperation was cited as a stumbling block in some cases. The highest levels of participation seem to be in counties where the screening agency has taken the time to get law enforcement on board, where the screening agency is physically present at the court on citation days, and where judges and juvenile defenders encourage participation.

Screening agencies provide the State's Attorneys with an assessment of risk level (low/medium/high), information about other factors that may be contributing to the juvenile's situation and behaviors, and recommendations for a course of action. State's Attorneys are not privy to the individual's responses to the screening questions. They have used this information to decide whether to refer to Court Diversion, refer to another court alternative program, or pursue juvenile probation. According to the State's Attorneys, the pre-screen frequently confirms and provides support to the direction in which they were already inclined to go.

6. Referrals to court alternatives

Finding: **Referrals to court alternative programs have increased as State's Attorneys' philosophies evolve and as the availability of alternative options has grown.**

Discussion

There is a continuum of options for 16 and 17 year olds who have been accused of committing crimes that includes several alternatives to court. Beginning with the lowest level of criminal justice system involvement, the options are:

- Pre-charge programs to which a law enforcement officer or State's Attorney can refer the juvenile before he or she is issued a citation to appear in court, avoiding the court process altogether.
- Court Diversion, to which the State's Attorney can make a referral after the individual is charged in either juvenile or adult court, but before prosecution begins.
- Direct referral to a Balanced and Restorative Justice Program (BARJ) or a program operated by a Community Justice Center (e.g., reparative board, family group conferencing) by agreement of the parties at the start of the juvenile court process if the youth admits guilt, avoiding further court process.
- Direct referral to BARJ or a program operated by a Community Justice Center by the court after the youth has been adjudicated (i.e., found to have committed the offense).
- Probation.

All counties are served by Court Diversion programs. The availability of other alternatives to court has grown since 2011. While some counties, such as Chittenden county, have a wealth of alternative programs that can serve 16 and 17 year olds, there is a paucity of such resources in the smaller, more rural counties.

For low level and first-time misdemeanor offenses, in particular, State's Attorneys frequently use court alternatives for 16 and 17 year old youth. In the words of one State's Attorney, "In general, I am shifting away from traditional formulaic court filings towards alternatives." Several State's Attorneys noted that, in light of their concerns about DCF's strained resources, they tend to save the most serious cases for probation and use alternatives wherever possible and appropriate.

Court Diversion

Referrals to Court Diversion are made at the discretion of the State's Attorneys. Court Diversion continues to be highly regarded and heavily used by the State's Attorneys for cases involving 16 and 17 year old youth. This is true for cases filed in both juvenile and adult court.

State's Attorneys reported that the factors they weigh in deciding whether to refer to Diversion are the same whether the individual is cited into juvenile or adult court, with the exception of one factor. Although it does not happen frequently, a youth who fails the Diversion process is ordinarily brought back into court. While extending juvenile jurisdiction to 18½ does make it possible to refer older youth to Court Diversion, there is no mechanism for bringing a case back to court when the age limit is reached. In rare instances, State's Attorneys may file in adult court in order to give the Diversion referral "some teeth."

In counties where Court Diversion is the only alternative to court, it may be used to a greater extent than in counties that have pre-charge programs.

Few changes in practice regarding Court Diversion were cited. If anything, the State's Attorneys in some counties said that they have gotten more flexible in referring youth to Court Diversion for a second and even a third time, in consultation with the local Diversion organization.

Some of the characteristics or limitations of Court Diversion programs have implications for practice regarding 16 and 17 year olds.

- Referrals to Diversion may have decreased in areas where there are pre-charge programs. While there is a fee associated with Court Diversion, there is no cost to participate in pre-charge programs. Defense attorneys often push for referrals to those programs rather than Diversion in order to avoid the fee. Since pre-charge programs lack the conditions of release that continue to exist in Diversion, a State's Attorney may prefer a Diversion referral.
- According to Vermont Association of Court Diversion Programs policy, cases involving intimate partner violence, sexual violence, or intimate partner stalking cannot be referred to, or accepted by, any Diversion Program.[8]

Pre-charge programs

As its name indicates, a pre-charge program is one to which a youth can be referred before a case is filed in court, thereby avoiding the court process and creation of a record. There are currently pre-charge programs in seven counties (Caledonia, Chittenden, Orange, Orleans, Washington, Windham and Windsor). In two of those counties, access is not county-wide. (In both Windham and Orange counties, pre-charge programs operate in just two towns.)

With the exception of the two Windham county programs, for which MOUs exist that set forth criteria and protocols, no explicit policies or criteria for the pre-charge programs were described. Decisions are made on a case by case basis. Generally speaking, youth are referred to pre-charge programs for low level offenses and "youthful indiscretions." One State's Attorney described a practice of considering first whether a

[8] Willa Farrell, Vermont Association of Court Diversion Programs. [e-mail communication, May 12, 2014]

pre-charge referral is appropriate before moving on to Diversion or other options.

While the majority of pre-charge referrals are made by law enforcement officers in most counties, State's Attorneys also make pre-charge referrals. Law enforcement officers are directed to make referrals at their own discretion. Unless a law enforcement officer consults with the State's Attorney before making the referral, State's Attorneys play no role in law enforcement referrals and are not informed of the referrals.

While Lamoille, Bennington, and Rutland counties do not have actual pre-charge programs, they do have an organization in each of their communities to which 16 and 17 year olds may be referred on a case by case basis, in consultation with the community-based program. (In Bennington county, the only program is a high school-based program.) A State's Attorney in one of these counties speculated that their office makes these one-off referrals less frequently than they might to a formal pre-charge program because of the time-consuming nature of making individualized arrangements.

No obstacles to making referrals to pre-charge programs were identified.

Referrals to community-based providers by the court

Act 159 permits the court to refer a youth who is adjudicated delinquent directly to a community-based provider such as a Community Justice Center or Balanced and Restorative Justice Program (BARJ), rather than placing the youth on probation with the Department for Children and Families.[9]

Only one State's Attorney has made recommendations to the court for direct referrals with some frequency. Less than half of the State's Attorneys reported that they recommend direct referrals sometimes. The majority have never recommend that a judge make a direct referral to a community-based provider. No obstacles to direct referral post-adjudication were identified.

The State's Attorneys offered a variety of explanations for their use or non-use of this provision.

- Direct referral can be appropriate for a moderate risk YASI™ result when there is a supportive family and no need for rehabilitative services.
- Direct referral can be useful for youth who are already in DCF custody and receiving a lot of services.
- Direct referral can be a useful next step for kick-backs from Diversion.
- Direct referral post-adjudication is midway between Diversion and probation in the continuum of options; it does not require DCF involvement.
- For some youth, a court appearance has a sobering effect.
- Juvenile probation is worthwhile even if its only condition is to work with the

[9] 24 V.S.A. §1967 prohibits referrals to Community Justice Centers for cases involving domestic violence, sexual violence, sexual assault, or stalking, with a single exception that applies only to cases in adult court.

reparative board because the probation officer can offer support and ensure follow-through.
- Conversely, probation should not be involved if its only role is to supervise reparations.
- They are unlikely to have a youth go through the juvenile court process unless probation is the desired outcome; alternatives to court are used instead.

A number of the State's Attorneys noted that they make direct referrals to community-based providers by agreement of the parties at the start of the juvenile court process.

7. Systemic issues

Finding: **For the most part, resource issues rather than issues with the law are the most significant impediments to accomplishing the State's Attorneys' goals of ensuring public safety and achieving the best long term outcomes for 16 and 17 year old youth.**

Discussion

The 2011 study found that State's Attorneys are motivated by two goals: achieving the best long term outcome for the young person and ensuring public safety. Two and a half years later, the current study asked State's Attorneys what they see as necessary in order to achieve those goals going forward.

Several themes emerged from the State's Attorneys responses. It is interesting to note that in 2014 most of the themes relate to the need for resources rather than changes in the law. One over-arching theme is that court access, resources, and services are highly dependent upon where a 16 or 17 year old youth resides.

1. The availability of services and programs and court alternative programs that can serve 16 and 17 year old youth varies widely among the state's counties. The lack of community-based resources is a particular issue for tiny Essex and Grand Isle counties, where most services are available only across county or state lines. But size is not the only determinant, as demonstrated by the lack of a pre-charge program in Rutland county and the existence of pre-charge programs in Caledonia and Orleans counties, which are about half its size. State's Attorneys in some of the more abundantly-resourced counties acknowledged their counties' good fortune in having many community-based resources, services, programs, and organizations that serve the needs of youth compared to other parts of the state.

2. Access to court continues to be an issue in some parts of the state. Limited juvenile court calendars cause significant delays in smaller counties. Full adult court dockets can also cause delays. The inability to have a speedy hearing in

juvenile court for serious cases where there is threat of violence to self or others or a flight risk was identified in 2011 and continues to be an issue in some parts of the state.

3. Residential programs for older youth that can keep youth safe and remove them from their communities are sorely lacking. Finding placements for older youth is even more problematic, as residential programs for youth will not generally accept youth close to 18 and older.

4. The demand for substance abuse and mental health treatment has overwhelmed available treatment resources across all ages. As Rapid Intervention Community Courts (RICC) are developed in more counties, the demand for substance abuse treatment will increase. There is a need for treatment programs specifically for youth in many areas of the state and, as competition for resources increases, the needs of youth may be even less well met.

6. The capacity of DCF to serve 16 and 17 year old youth adequately is in question. There was general acknowledgement that DCF caseworkers are overburdened and work within a system that suffers from seriously inadequate resources. Other concerns included the perception by some that DCF is designed to serve younger children and has less to offer youth as they age, and that older youth may be a lower priority among the caseworkers' many duties. The question of whether caseworkers receive adequate training and support to serve as probation officers was also raised.

7. In the absence of a continuum of services to provide supports, supervision and, potentially, the threat of consequences beyond the age of 18½, age will continue to be a factor in decisions regarding whether older youth are charged as juveniles or adults.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

There have been some notable developments in the two and a half years since the publication of the 2011 report on Vermont's State's Attorneys' perspectives on jurisdiction and referrals for 16 and 17 year old youth. The passage of Act 159 in 2012 addressed a number of the obstacles to charging 16 and 17 year old youth in juvenile court that the State's Attorneys had identified in the 2011 study. The number of counties that have formal (written) and informal (unwritten) policies that guide decisions regarding court jurisdiction for 16 and 17 year old youth has increased dramatically. More State's Attorneys' view Youthful Offender status as a useful tool and they are utilizing it more than in 2011. Alternatives to court are more available now in some but not all parts of the state, and State's Attorneys are making more use of those alternatives

for 16 and 17 year old youth.

At the same time, the current study finds that State's Attorneys report that there are still a number of impediments to accomplishing their overarching goals of ensuring public safety and achieving the best long term outcomes for 16 and 17 year old youth. Most of these point to the need for additional resources rather than changes in the law.

Recommendation

Qualitative research provides a depth and richness of information that quantitative research methods such as surveys and analysis of statistical data cannot provide. A qualitative study such as this one, which bases its findings upon the narrative reports of its informants, can also shine a light on questions and issues that require a quantitative analysis to be fully understood.

That is the case here. A look at the numbers, shaped and informed by the findings of two qualitative studies, is a logical next step. A quantitative inquiry can answer questions about how many 16 and 17 year old youth are referred to pre-charge programs, how many who are charged in both juvenile and adult court actually proceed through the entire, traditional court process in both jurisdictions, how many are diverted to alternatives to court, and how often Youthful Offender and deferred sentencing are employed in adult court cases, as well as providing information about the outcomes correlated with those approaches.