



Testimony on H.95
An Act Relating to Jurisdiction Over Delinquency Proceedings
April 28, 2016

Cara Cookson
Policy Director and Victim Assistance Program Coordinator
Vermont Center for Crime Victim Services

The Center applauds the efforts of those who worked to bring this bill to fruition. The Senate-passed version of H.95 significantly expands Family Division jurisdiction over juvenile and young adult criminal matters, a concept the Center supports in principle. Allowing more cases to be handled by the Family Division will provide young offenders with better access to services and hopefully will lead to fewer violations of conditions of release pre- and post-adjudication, as well as an overall reduction in recidivism.

Nonetheless, transferring jurisdiction from the Criminal Division to the Family Division also significantly reduces public transparency and narrows certain rights held by victims in order to maintain confidentiality within juvenile proceedings. *By striking an appropriate balance and providing limited access and information for victims, the victim rights provisions of H.95 can help to stem any public perception that the Family Division process does not hold the offenders accountable. The age of the offender does not change the impact of the criminal behavior within the community.*

Sections 21 and 22 of the Senate-passed version of the bill both concern victim rights, much of which is current law re-organized for clarity. As with current law, the two sections are divide victims into listed and non-listed crime categories.

The Right to Notification:

- In listed and non-listed cases, the Senate-passed version makes the prosecutor's office (through the victim advocates) responsible for providing notice and explaining matters pertaining to the case.

- The non-listed provision diverges from current law, which requires the court to effectuate all of the victim rights provisions for the non-listed crimes. The Center’s experience is that prosecutor’s offices are better situated to provide notice, especially given that courts rarely have victim contact information.
- In listed and non-listed cases, the Senate-passed version clarifies that the victim is entitled to be notified regarding final disposition, including any restitution ordered.

The Right to Information:

- In listed and non-listed cases, the Senate-passed version requires the prosecutor’s office to explain to the victim his or her rights, as well as his or her responsibility to keep the proceedings confidential. Confidentiality is governed by 33 V.S.A. §§ 5110 and 5117 and enforced through V.R.F.P. 16.

The Right to Make a Victim Impact Statement and Seek Restitution/The Right to Be Present:

- In listed and non-listed cases, the Senate-passed version allows victims to file a victim impact statement with the court for purposes of disposition. The Senate-passed version also allows the victim to make a statement in person, or to testify about his or her claim for restitution, at the final disposition hearing. *The victim will be excluded from all other portions of the disposition hearing—and from all other hearings that occur in the juvenile matter—unless the court finds that the victim’s presence is necessary in the interests of justice.*
- The court is required to take the victim’s views into account when ordering disposition.

The Right to Notification Regarding Conditions of Release/Identity of Alleged Perpetrator:

- In both listed and non-listed crime cases, the Senate-passed version entitles victims to notice regarding any conditions of release that pertain to the victim or a member of the victim’s family or current household throughout the case.
- In listed crime cases, the Senate-passed version entitles victims to be notified as to the identity of the alleged juvenile perpetrator at the start of the case – to the extent the victim does not already know the identity.
- In non-listed crime cases, the Senate-passed version only allows victims to know the identity of the perpetrator at final disposition, and only upon the court conducting a balancing test and ordering the release of the child’s

identity.

- ***As a result, victims are entitled to know about any conditions of release, both pre- and post-adjudication that concern them, but they are not entitled to know the identity of the perpetrator.***
- **For example: in a vandalism case, the victim would be entitled to know that a pre-disposition condition of release was issued prohibiting the juvenile from trespassing on the victim's property, but the victim would not be entitled to know who that condition applies to.**
- **For example: in a hate crime case—so long as the underlying offense is non-listed—the victim would not be entitled to know the name of a juvenile offender the court has ordered not to contact the victim or to come within 300 feet of him or her.**

The Center has two proposals to remedy these concerns:

Option One: Treat Listed and Non-listed crimes the same — strike the non-listed provisions and strike the references to “listed crime” in the listed crime section, thereby enumerating the rights that all victims can expect in juvenile proceedings. Given the extent of cases that will be prosecuted in the Family Division instead of the Criminal Division, simplifying these provisions will help ensure they are enforced.

Option Two: At the very least, allow the victim of a non-listed crime to know the name of the offender against whom conditions of release related to the victim (or the victim's family or household member) have been ordered.

Section 22 at (1)(B) and (2) should be added to include: "Notification regarding conditions of release or conditions of probation shall include the child's name."

Again, the purpose of these proposals is not to further stigmatize juvenile and young adult offenders but to set a proper balance with respect to victim safety and transparency. Victims cannot be proactive in safety planning or notify authorities where conditions of release are violated if the victim does not know the identity of the juvenile offender who is subject to the condition.

The Center respectfully requests that your Committee not concur with the Senate's proposed amendment to H.95 in order to address this common-sense issue.