



## **DEPARTMENT FOR CHILDREN AND FAMILIES**

To: Members of the House Judiciary Committee  
From: Ken Schatz, Commissioner  
Date: March 11, 2015  
Subject: H.95

Thank you for the opportunity to comment on H.95. DCF supports this bill conceptually. The spirit of the bill aligns with our desire to prevent 16 & 17 year olds from entering the adult criminal justice system and thus avoiding the long-term and permanent consequences of a criminal record; avoiding a system that is suited for adult decision-making and brain development; and ensuring that the opportunity for the risks and needs that are unique to youth can be addressed.

However, based on the limited information that we have regarding 16 & 17 year olds charged and convicted in adult court, we believe that the resources DCF would need to implement H.95 as written would be substantial. After analyzing the court data for SFY14 (475 16 & 17 year olds charged in adult court resulting in 197 convictions), we estimate that DCF would need to add 14 FTEs to handle the additional workload, which would include: offering additional YASI (Youth Assessment Screening Instrument) screenings, DCF social worker attendance at merits and disposition hearings, hours needed to complete disposition reports and an additional 197 cases on DCF Probation. Therefore, in its current draft, DCF is unable to support this bill unless currently under-utilized options that prevent youth from being placed on probation are used more frequently and additional alternatives are developed.

We have a number of suggestions to explore that could potentially position DCF to support H.95. These include:

1. Adopting an approach similar to Connecticut's Juvenile Justice Reform wherein stakeholders collaborated closely and rolled out the jurisdiction change over a three-year period. In Connecticut, they started with 16 year olds first and then added 17 year olds.
2. Encouraging law enforcement and state's attorneys to utilize pre-charge referrals to community based restorative justice programs.
3. Enabling judges to overrule state's attorneys' decisions on Court Diversion program referrals. In cases where a state's attorney does not make the referral, our hope is that a

judge could determine that a youth is appropriate for the program and keep them out of court. Please see suggested statutory language below.

4. Increasing the use of the option from Act 159 that allows for a youth to be referred directly by the court to community based restorative justice program in lieu of probation.
5. Implementing a telephone response supervision probation program similar to that of the Department of Corrections wherein lower risk youth assigned to pay fines, victim restitution and/or participate in community service have limited contact (DOC uses monthly phone calls) with their probation officer as long as they're in compliance. In some cases, DCF could delegate this supervision to community providers. Please see suggested language below to include in H.95.

### **Suggested Language for Court Diversion Program Referrals**

Sec. 7. 3 V.S.A. § 163 is amended to read:

\* \* \*

(c) All diversion projects receiving financial assistance from the Attorney General shall adhere to the following provisions:

- (1) The diversion project shall only accept persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated.
- (2) Alleged offenders shall be informed of their right to the advice and assistance of private counsel or the public defender at all stages of the diversion process, including the initial decision to participate, and the decision to accept the diversion contract, so that the candidate may give his or her informed consent.
- (3) The participant shall be informed that his or her selection of the diversion contract is voluntary.
- (4) Each State's Attorney, in cooperation with the diversion project, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the ~~State's Attorney~~ Court shall retain final discretion over the referral of each case for diversion.

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### **Suggested Language to Implement a Telephone Response Supervision Program**

Sec. 8. DCF Policies

The Department shall develop a policy to implement a telephone response supervision program in cases where telephone supervision is appropriate, such as cases where the risk level screen is low and the Court has ordered that the child pay fines, victim restitution or participate in community service. The Department may designate community providers to perform telephone response supervision.

Sec. 9. 33 V.S.A. §5232 is amended to read:

\* \* \*

(b) In carrying out the purposes outlined in subsection (a) of this section, the Court may:

(1) Place the child on probation subject to the supervision of the Commissioner, or a community provider as designated by the Commissioner, upon such conditions as the Court may prescribe. The length of probation shall be as prescribed by the Court or until further order of the Court.

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