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**Report to**  
**The Vermont Legislature**

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**Youthful Offenders Report**

**In Accordance with Act 153 of 2016: An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court**

**Submitted to: Joint Legislative Justice Oversight Committee**

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## I. Introduction

This report is a result of Act 153 section 33:

*The Commissioners for Children & Families and of Corrections shall consider the implications of adjudicating as youthful offenders all defendants who have attained 18 years of age, but not 21 years of age, who have not been charged with an offense specified in 33 V.S.A. Section 5204(a). The Commissioners shall report their findings and any associated recommendations or proposed legislation to the Joint Legislative Justice Oversight Committee on or before November 1, 2016.*

This report contains the history of Youthful Offender status prior to the passage of Act 153, the findings and recommendations from the Department for Children and Families (DCF) and the Department of Corrections (DOC) and the implications of these findings and recommendations.

DOC and DCF agree that much more analysis is needed before the two departments will be in the position to support that Youthful Offender status is required for ALL 18-21-year-olds, except those that commit a Big 12 Offense. While the departments cannot yet take a position about “ALL,” DCF and DOC are both supportive of the expanded use of Youthful Offender status passed in the bill effective July 1, 2018. Implementing this change will require a substantive amount of coordination, policy adjustment, and resource re-allocation. Additionally, we are mindful that Act 153, Section 34 directs the Joint Justice Oversight Committee to consider expanding Family Court jurisdiction to include 18-21-year-olds which raises a parallel set of questions for consideration.

## II. Background Information

Prior to the passage of Act 153, Youthful Offender status (as defined in 33VSA §5281- §5288) was created to recognize that older youth, up to age 18, are developmentally different than adults and that therefore their treatment needs and capacity for rehabilitation should be considered. By connecting eligible youth to family court and the Department for Children and Families (DCF), Youthful Offender status allows youth to receive age-appropriate treatment and supervision. For youth with this status who complete the terms of their probation successfully, their conviction will be expunged and their family court record sealed thus avoiding the conviction in their permanent record.

Per court procedures prior to Act 153, Youthful Offender (YO) status may be offered to youth ages 10-18 at time of offense. The youth enters a conditional guilty plea in Criminal Court, which in turn enters an order to defer sentencing and transfers case to Family Court to determine whether YO status should be granted. The Family Division sets a hearing. DCF files a report on the youth that recommends whether: public safety is at risk; the youth is amenable to treatment or rehabilitation; AND there are sufficient services in the juvenile system to meet the youth's needs. If the motion to grant YO status is approved, conditions of probation are imposed and a DCF social worker and a Department of Corrections Probation Officer are assigned to work with the youth. Either DCF or DOC could be the lead agency. Each keeps documentation per their policies. Please see *Attachment A* of this report for a case flow chart.

The benefits of Youthful Offender Status are that youth can receive support and supervision from a social worker in accessing treatment and services necessary to complete the requirements of their probation. If youth successfully complete their probation requirements, their criminal court record is expunged and their family court record is sealed.

However, there are a few drawbacks, including that Youthful Offender Status is often not available to many potentially eligible youths. Even with the co-supervision provided by DOC and DCF, the perception is that this status offers very little teeth. DOC is not empowered to use all its tools for supervision in the community which, when engaged at the right time, can lead to the youth avoiding incarceration. Finally, because these youths are initially charged and then must file a plea of guilty in Criminal Court, aspects of their criminal record can remain available to the public even with expungement of their case.

## III. Findings and Recommendations for Implications related to Implementing Act 153

As of July 2016, DCF staff have been regularly meeting with Justice System Stakeholders including staff from the DOC, the Judiciary, the Department of State's Attorneys and Sheriffs, and the Office of the Defender General (AKA "the stakeholder group"). This section of the report discusses the areas where policy, practice, or resources are impacted and need to be addressed before the change in Act 153 Youthful Offender expansion to age 21 takes effect July 1, 2018. As noted previously, in some cases continued exploration and research is needed; in other cases, resolution has already been achieved or there is a clear recommendation for a policy change to address the area of concern.

## **(A) Case Flow and Communication**

This section includes policy and practice shifts specific to the Department for Children and Families and the Department of Corrections.

### **1. DOC and DCF Joint Supervision of Youthful Offenders**

Findings:

- a. One concern raised during the discussions with Senate Judiciary last session was that the statute currently does not support a seamless transition from DCF supervision to DOC supervision when there is a violation of probation. Specifically, there is no provision allowing DOC's use of the graduated sanctions to supervise Youthful Offenders that it uses for other types of probationers who violate their conditions of supervision/probation. DCF and DOC collaborated during the session to draft language for Title 33 to correct this issue. However, upon further investigation, additional language is needed in Title 28.
- b. Also, it is not clear that DOC could provide for joint supervision/case management of YO cases that started in Family Division.

Recommendation (for both findings above):

DOC and DCF agree that adding an additional 'Youthful Offender' chapter to T28 and additional language to T33 would address this issue. Proposed legislative language is being developed.

### **2. Interstate Compact for Juveniles (ICJ)**

Finding:

Youthful offenders are not eligible for transfer under the Interstate Agreement of Adult Offender Supervision; the Interstate Compact for Juveniles (ICJ) system would need to be used. There are several drawbacks to this outlined below.

There currently is no way to authorize law enforcement from other states to arrest an individual with youthful offender status who has violated probation. Specifically, if a Family Court Judge issues a Juvenile Pick Up Order, that order cannot be entered into the National Crime Information Center (NCIC) database. Consequently, law enforcement in other states cannot pick the youth up for violating probation.

There is also concern that youth may not be offered or accept YO status if they wish to leave the state or if they are from a different state. ICJ rules do not apply when the youth is over 18 because they are considered adults in other states.

Recommendation:

Explore whether a statutory change would resolve this issue.

### **3. Sex Offender Registry**

Finding:

Under current statute, an individual who is convicted of certain sexual offenses under DOC supervision can be placed on the public sex offender registry. For individuals with Youthful Offender status who are adjudicated in Family Court but are supervised by DOC, some assurance would be needed that they would not be placed on the adult sex offender registry unless their Youthful Offender status was revoked.

Recommendation:

This may need to be clarified in statute.

**(B) Systemic Issues:**

**1. Access to Youthful Offender Records by stakeholders**

Finding:

Court policies prohibit the sharing of records once they have been sealed. However, the justice system stakeholders rely on case information for research purposes including outcome analysis i.e. re-offense rates and strategy effectiveness. This information is particularly helpful to the stakeholder group with continued system improvement.

Recommendation:

DOC and DCF want to be able to share information with justice system stakeholders. Although the court can engage its partners in specific MOUs to provide case information in specific occurrences, a narrowly tailored statute that allows case information sharing would be more straight-forward. This topic is still under discussion by the stakeholder group.

**2. The Role of Family Court and Criminal Courts with Respect to YO Cases**

Finding:

Act 153 provides an avenue for Youthful Offender cases to originate in Family Court, however there is no clearly defined method for simultaneously opening a Criminal Court case. It is also not clear how a YO case that originated in the Family Division could remain confidential in the Criminal Division, which is the purpose of filing directly in Family Court.

Recommendations:

See **Attachment B** for suggested language outlining an alternative to the process included in Act 153. DCF and DOC worked with the Defender General's Office and the Judiciary on language amending 33 V.S.A. §5285. The proposed language provides that a Youthful Offender case is transferred to the Criminal Division when YO status is revoked and a record is created in the Criminal Division that includes the charge, conviction, disposition and revocation. This language is proposed as an alternative to the language that was included in Act 153 (33 V.S.A. §5281).

**3. Party Status for DOC staff in Youthful Offender/Family Court Proceedings**

Finding:

Currently, no statutory provisions address the need for assigned DOC staff to have party status in Family Court, even though DOC jointly supervises YOs.

Recommendation:

Add language to T33 §5102. (Please see **Attachment C** for suggested language.)

**4. Motor Vehicle Offenses**

Finding:

Act 153 section 19 added language (amending 4 V.S.A. §33) allowing family court jurisdiction of misdemeanor motor vehicle offenses. Upon further reflection of the law, the

current definition of a “delinquent act” specifically excluded these offenses from the jurisdiction of the Family Division. These two provisions of law contradict one another and language clarification is needed to allow Family Division jurisdiction of certain motor vehicle offenses.

Recommendation:

Add language to T33 §5102. (Please see *Attachment C* for suggested language.)

#### **IV. Findings and Recommendations for Implications of Adjudicating ALL Defendants Aged 18-21 as Youthful Offenders**

Act 153 is a substantial undertaking to implement and the question of whether Youthful Offender status should be required for ALL individuals between the ages of 18 and 21 is complex. As the report reflects, DOC and DCF are not yet prepared to recommend to the legislature that ALL individuals between the ages of 18 and 21 must be afforded this opportunity. This change would substantially impact the Family Court, the Department of Corrections, and the Family Services Division. This could more than double DCF’s juvenile probation caseload and increase the need for Youthful Offender Probation Officers at DOC.

##### **(A) Creating a Right-sized Juvenile Justice System in Vermont**

Taking the lead from other states, much is known about the importance of preventing most youth from ever touching the juvenile justice system. In Connecticut, justice system stakeholders braced for an anticipated sharp increase in referrals when the state raised the age for juvenile jurisdiction to the age of 18. This sharp increase never came to be. This is attributed to the state’s efforts in providing many avenues to divert youth from the justice system and by having the level of intervention match the level of risk.

From the research for the creation of Act 153, it is known that many youths attain better outcomes by doing nothing at all, rather than responding with oversight/support that exceeds the youths’ risk and need level.

As a system, Vermont does not want to inadvertently widen the juvenile justice net. In other words, for youth who should never hit our systems, we should make every effort to help them avoid contact. The stakeholder group is engaged in conversation about how to help ensure youth, who don’t belong in our systems, do not become involved. These conversations are preliminary and need to include technical assistance input as they move forward. A clear recommendation coming from all the stakeholders is that designing this system well, and proposing the changes the legislature could make to support system improvement are still a year out. That said, here are the questions the group is grappling with to move towards this goal:

1. Need to fully understand the disposition of cases involving 18-21 year olds: How often are court alternatives offered now?
2. What are the risks and needs of 18-21 year old individuals currently under DOC supervision?
3. What abbreviated risk assessments can be used at arrest that could direct how many services are offered?
4. What ways can we get closer to geographic continuity? Act 159 affords all youth the opportunity to participate in a risk assessment and for States Attorneys to use that information to inform whether to charge the youth. How can this be used to support continuity?
5. How can court alternatives such as community-based restorative justice programs be utilized more? What additional alternatives are needed?
6. What post-filing/pre-adjudication options could be offered? What role does deferred sentencing have when included in this continuum?
7. What lessons can we take from Connecticut, Illinois, California and other places?
8. How could a national expert/Technical Assistance Provider be helpful to the stakeholders?
9. How can we address the discontinuity of stakeholder record keeping to create clearer ways to track youth outcomes?

Overview of Findings:

Shifting all individuals eligible for youthful offender status up to the age of 21 to the family court system, within its current configuration would shift cases from District Court and would present an immense strain on Family Court resources, DOC and, the Family Services Division (FSD) capacity to supervise the additional caseload. However, there are many ways that Vermont could continue to improve juvenile justice without presenting too big of a burden on its family court.

Recommendations:

Raising the age of juvenile jurisdiction is different from raising the age of Youthful Offender, but has a similar potential impact on the number of family court cases. We believe a critical step is to create robust pre-filing alternatives that allow youth to never need to touch the court system. Doing this well in Vermont is going to take collaborative planning, creativity, commitment to consistency and time to plan. The stakeholder group, DCF and DOC will need to continue to work on this together.

A plan that moves forward with a right-sized system for youth will need to consider several factors in play, including:

- FSD caseload volume driven by the increases in abuse/neglect filings and case lengths
- FSD quality assurance and federal requirements
- The need for additional legal representation of youth
- Additional court and supervision time for FSD staff
- Additional court and supervision time for DOC Youthful Offender Office
- Court Space

**(B) Data: The impact of all individuals between 18 and 21 (excluding the Big 12) are offered Youthful Offender status**

To fully understand the potential impact of an expansion in eligibility for YO, several data factors and barriers to acquire data need to be considered:

- The number of 18 to 21-year-olds currently referred to Criminal Court for “non-Big 12” offenses.
- Court data for 18 to 21-year-olds does not differentiate the “Big 12.” The closest approximation to this is looking at non-listed versus listed crimes.
- How these cases are disposed in Criminal Court
- Courts track cases, not people, and the courts utilize a very old application for case management.
- DCF and DOC track people not cases.
- DCF has an IT barrier described in Section (C) regarding tracking youthful offenders in its case management system.

**Available Data Overview**

**Court Data:** (Approximate) Cases 18-20 years of age

	Non-listed Felony Convictions	Non-listed Misdemeanor Convictions
2015	164	510
2016	115	458

Please note, the judiciary is currently updating its case management software. As a result, there could be some minor discrepancies with its data.

**DOC Data/Individuals aged 18-20 under Supervision:**

10.10.16 Point-in-Time (PIT) Count

Non- Big 12	444*
Big 12	58
TOTAL	502

\* Of those under supervision of DOC, 40 individuals between the ages of 18-21 (who did not commit a Big 12 offense) were incarcerated.



**FSD Data/Individuals up to the age of 18.5 on Juvenile Services Caseload (including delinquents and YO):**

10.10.16 PIT Count

Adjudicated youth on probation	140
Youth with pending adjudications	50
Adjudicated youth in custody	103
TOTAL	293

**Preliminary Conclusions from the Data:**

DCF, DOC and the other justice system stakeholders still need to work through how many new individuals are referred to any system partner from year-to-year. This is a work in progress, however some conclusions can be drawn from this initial data if Youthful Offender status is afforded to all 18-21-year-olds (except the Big 12):

1. If DCF Family Services staff and DOC youth probation officers were to attend Family Court Hearings for all potential Youthful Offenders (as is current practice for DCF staff), this could be a significant resource factor to consider.
2. If DCF Family Services staff prepare disposition reports for all cases that are eventually disposed in court, this is also a factor to consider when mapping resources.
3. Based solely on the numbers at hand, one could conclude that the change proposed would more than double the DCF/FSD caseload.
4. If all the non-violent misdemeanor cases were converted to Youthful Offender status, it would take 18 DOC YO Officers to supervise them at a caseload ratio of 25:1 per statute.

**(C) Information/Technology (IT) Needs**

**1. Case Tracking and Confidentiality of Youthful Offender Cases for DOC**

<p><u>Findings:</u> Currently, DOC does not add Youthful Offenders under its supervision to its database. DOC's IT struggles to ensure YO information is not accessible by the public.</p>
<p><u>Recommendation:</u> DOC has determined a method for shielding YO cases from appearing on its public website. DOC is in the process of creating a guidance document for case tracking and will roll out an update for staff.</p>

## 2. Case tracking for Youthful Offenders for DCF

Findings:

The electronic case management system for DCF Family Services Division does not have a specific field for tracking Youthful Offenders (all YOs are coded as delinquents in the DCF system). DCF has numerous competing priorities with respect to its IT projects and few resources to devote to them.

Recommendation:

Creating a new field in the FSD case tracking system would require a considerable IT lift, however it is likely the best solution to this issue.

## V. Summary/Conclusion

DCF and DOC are not yet prepared to make a recommendation on whether ALL 18-21 year olds (except for those who commit a Big 12 offense) should be treated as YO. Likewise, the stakeholder group is very supportive of juvenile justice reform but needs to more fully understand the implications and opportunities for adding ALL 18 to 21-year-olds to YO status.

Implementing the changes made to Youthful Offender status in Act 153 effective July 1, 2018 will require several shifts in policy, practice and statute. For some of these, DCF, DOC and their stakeholder partners agree on the statutory changes needed; for others, the potential solutions are still being discussed. In summary form, the changes needed are:

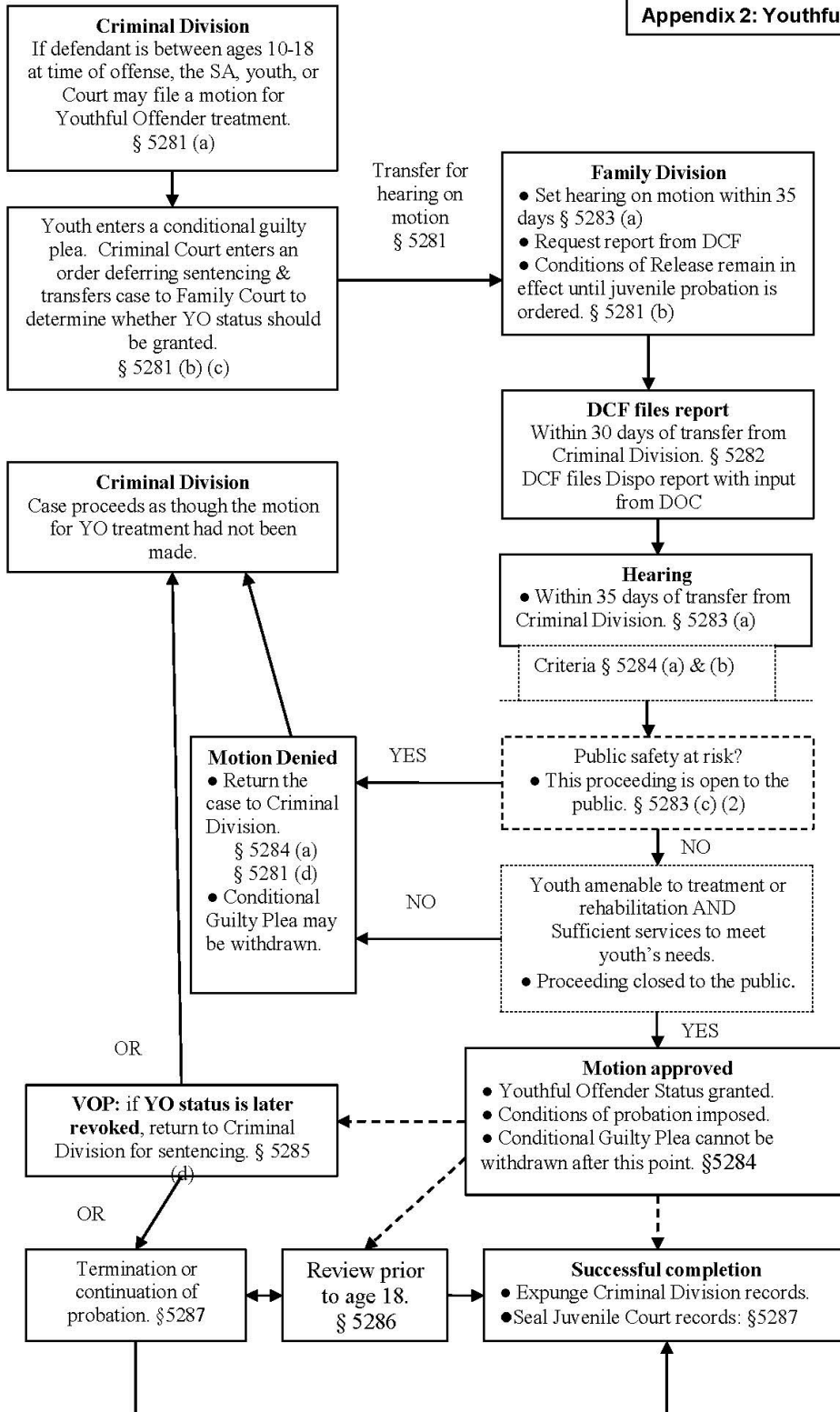
- Having the role and process for involving the Criminal Court clearly defined for YO cases that originate in Family Court;
- Allowing Juvenile Justice stakeholders' access to court records for case tracking and research purposes;
- Clarifying legislation for motor vehicle offenses to be adjudicated in family court;
- Clarifying legislation for DOC's supervision of YOs;
- Giving DOC staff party status for YO proceedings in Family Court;
- Providing clear authority for other states' law enforcement to be able to arrest an individual with YO status who violates probation; and
- Preventing the placement of an individual with YO status on the Adult Sex Offender Registry unless their YO status is revoked.

If the legislature decides to move forward with legislation that mandates YO status for ALL 18 to 21-year-olds, except those who commit a Big 12 offense, there are additional considerations and implications that will need to be addressed. It is essential that Vermont designs a system that is right-sized for our youth. Studies show that no involvement with the system can be the most effective approach with a high percentage of youth. Additionally, we need to understand how to serve this population differently and the resources needed, including IT changes.

In closing, DOC and DCF are supportive of continuing to explore ways to improve outcomes for Vermont's young adults. Gaining a complete understanding of the implications is a substantial, but worthwhile task. Fully understanding the changes that are being contemplated for YOs begs the question of raising the age of jurisdiction to 21 and whether that might be less cumbersome to implement. Either way, DOC and DCF are committed to continued collaboration to understand the implications and to develop legislative recommendations.

# ATTACHMENT A

## Appendix 2: Youthful Offender Flow



## ATTACHMENT B

Sec. 1. 33 V.S.A. § 5281 (effective 7/1/18) is amended to read:

§ 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

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(d) If the Family Division accepts the case for youthful offender treatment, the case shall proceed to a confidential merits hearing or admission pursuant to sections 5227–5229 of this title. ~~If the youth is adjudicated, the Court will create a criminal case reflecting the charge and conviction.~~

Sec. 2. 33 V.S.A. § 5285 is amended to read:

§ 5285. Modification or revocation of disposition

(d) If a youth's status as a youthful offender is revoked, ~~and~~ the case is ~~returned~~ transferred to the Criminal Division under subdivision (c)(2) of this section including a record of the charge, conviction, disposition, and revocation, and the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

# ATTACHMENT C

*Proposed changes to § 5102 to address jurisdiction over misdemeanor motor vehicle offenses and party status of DOC in YO cases.*

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**§ 5102. Definitions and provisions of general application**

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

...

(9) "Delinquent act" means an act designated a crime under the laws of this State, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) snowmobile offenses in 23 V.S.A. chapter 29, subchapter 1 and motorboat offenses in 23 V.S.A. chapter 29, subchapter 2, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323;

(B) felony motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of 23 V.S.A. chapter 13, subchapter 13 and of 23 V.S.A. § 1091, pursuant to 4 V.S.A. § 33(b).

...

(22) "Party" includes the following persons:

(A) the child with respect to whom the proceedings are brought.;

(B) the custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition;

(C) the noncustodial parent for the purposes of custody, visitation, and such other issues which the Court may determine are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance;

(D) the State's Attorney;

(E) the Commissioner of the Department for Children and Families;

(F) the Commissioner of the Department of Corrections in Youthful Offender cases pursuant to 33 V.S.A. chapter 52 subchapter 5;