

Children and Family Council for Prevention Programs
Response to CSG Recommendations
Re Implementation of Act 153

Executive Summary

The Children and Family Council for Prevention Programs appreciates the opportunity to comment on the recommendations made by the Council of State Governments regarding the implementation of Act 153. Below is a summary of the Council's highest priorities with respect to the recommendations that the Council strongly supports, those that it strongly opposes, and two additional recommendations that are not in the report, but that we believe are critical to the successful implementation of Act 153.

A The Council's Highest Priorities with respect to the CSG Recommendations:

1. **YO Criteria** (CSG Recommendation A.1.): Criteria should exclude low risk/low need youth and focus instead on youth with moderate to high risk and needs.
2. **Risk and Needs Screening** (CSG Recommendation A.4/5): The Council supports:
 - (1) Legislation that requires a risk/needs screening in every case involving young adults and requires the State' Attorney to consider the results in determining the appropriate case track – i.e. diversion, YO status, etc.
 - (2) A mental health screening, but only in cases where certain defined indicators are present.
 - (3) The Council supports the use by DOC/DCF of the same screening/assessment tool.
 - (4) Diversion or Tamarack should be offered if the young adult's score on the risk/needs screening is at or below a predetermined level appropriate to the program.
 - (5) Legislation authorizing judges to order diversion.
3. **Mandated Cross System Training** (CSG Recommendation Appendix B): The Council Supports training for all system players – judges, prosecutors, defense bar, DOC, DCF, and staff from community justice programs, along with the development of a manual to guide decision-makers regarding appropriate system responses to offenses by young adults based on evidence based practices.
4. **Specialized Training for DOC/DCF Staff:** The Council supports Youth Thrive training for all DCF/DOC staff working with young adults.

B The Council strongly OPPOSES:

1. *Elimination of the current dual status system.* (CSG Recommendation B.1.)
2. *Legislation establishing minimum and maximum duration for probation or placement in a facility.* (CSG Recommendation B.2.)

C The Council recommends the addition of the following:

1. **A "Legislative Findings and Purpose" statute that sets forth the public policy underlying Vermont's youth/young adult justice system.**

In implementing the new system, it would be invaluable to all of the players including judges, state's attorneys, public defenders, DCF and DOC, to have the kind of policy guidance that a legislated "findings and purpose" statute could provide. The following is an example:

"The Legislature finds and declares as public policy that an effective youth justice system: protects public safety; connects youth and young adults to age-appropriate services that reduce the risk of re-offense; and, when appropriate, shields youth from the adverse impact of a criminal

record. In order to accomplish these goals, the system should be based on the implementation of data-driven evidence-based practices that offer a broad range of alternatives such that the degree of intervention is commensurate with the risk of re-offense. High-intensity interventions to low-risk offenders not only decrease program effectiveness, but are contrary to the goal of public safety in that they increase the risk of recidivism. An effective youth justice system includes pre-charge options that keep low risk offenders out of the system altogether.”

2. Vermont should offer the opportunity for pre-charge diversion to low risk youth and young adults in every county.

Pre-charge programs provide a valuable off-ramp prior to any court involvement for low risk/low need offenders. On the continuum of possible interventions, it represents the lowest level of intervention. Act 153 expanded this opportunity by including BARJ in addition to other options. State’s Attorneys and law enforcement should be strongly urged to use this new opportunity.

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Asterisks indicate that recommendation is a Council priority

A Right Size the System

1. *Establish clear criteria for YO status based on youth's assessed risk level and offenses*

***Council Position:** The Council supports a juvenile justice system that diverts low risk/low need youth from the system at the earliest possible point. While the Council agrees that there should be clear criteria for YO status, the criteria should exclude young adults who are low risk/low need. Those young adults should be diverted from the system (See #5). We propose that the criteria for YO status for young adults should be moderate to high risk individuals with moderate to high needs as determined by an appropriate screening (See #6).*

2. *Extend Family Court jurisdiction to include all 18 year olds with the exception of Big 12 offenses*

Council Position: While this change may be appropriate in the long term, we believe that Vermont first needs to evaluate and assess the jurisdictional changes made by the Legislature in 2016 and 2017. Specifically, we need to more fully understand the impact of these changes on the system's resources and the ability of the system to meet the needs of young adults. The focus for the next few years should be implementation of the recent changes along with progress on some of the other recommendations in this report such as for example ways to "mask" the record of young adults who receive a deferred sentence. (See #3 below)

3. *Create a specific deferred status that allows young adults sentenced in criminal court access to specialized services, masks admission of guilt, and leads to immediate sealing of records upon completion of supervision.*

Background: 13 V.S.A. §7041 currently permits the Court to defer sentencing without an agreement between the State's Attorney and the defendant if the defendant is younger than 29 years old and the crime is not a listed crime. A presentence investigation is required unless waived by the State's Attorney. With the exception of sex offenses, all records related to the defendant's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence are expunged upon successful completion of probation.

Council Position: This recommendation is consistent with the goals of Act 153. Legislation should be enacted that requires that when a sentence imposed on a young adult is deferred, the adjudication of guilt should be "masked" by sealing all records related to the conviction pending successful completion of probation. Since pre-sentence investigations are time consuming for DOC, we further recommend that the Legislature consider amending §7041(b) to substitute the results of a risk/needs screening in lieu of a pre-sentence investigation for 18-21 year olds. Deferred sentences and outcomes for deferred sentences (i.e. whether probation conditions were successfully completed or not) should be tracked by the Judiciary.

4/5: Recommendations A4 and A5 should be combined into one recommendation since #5 presumes that #4 is in place, Therefore the Council's recommendation on 4 and 5 have been combined into one recommendation.

4. *Require that young adults receive a risk and mental health screening at intake and that these tools are used to guide diversion decisions.*

Background: This is a key recommendation. 13 V.S.A. §7554c currently requires that a person be offered a risk assessment and, if appropriate, a needs screening, if charges are filed in the criminal division prior to arraignment for all crimes except listed crimes. This is currently voluntary on the part of the defendant unless ordered as a condition of release following arraignment. It should be required for young adults so that a correct decision can be made with respect to diversion.

Another key question is what tool should be used: DCF has heavily invested over the past few years in the YASI tool and their staff is trained in interpreting the results. DOC on the other hand is using the ORAS tool for adult offenders. A concern voiced by the Public Defender is whether the YASI screening instrument would require the alleged offender to answer questions about the incident that forms the basis of the charge prior to merits.

5. *Consider encouraging/requiring diversion for young adults screened as low risk and/or who commit specified offenses.*

Background: 3 V.S.A. §163 (juvenile court diversion) and §164 (adult court diversion), currently require the State's Attorney and the diversion program to develop "clear criteria" for deciding types of offenses and offenders eligible for diversion. However, State's Attorneys retain final discretion over the decision to refer a case. Adult diversion is limited by statute to adults who have been charged with a first or second misdemeanor or a first nonviolent felony. All counties also have a Tamarack program which is a form of enhanced diversion. Tamarack will accept offenders with drug related and/or mental health issues that have been previously convicted of multiple offenses. Like Diversion, the case becomes confidential if Tamarack accepts the offender. A critical difference between Tamarack and Diversion is that offenders who are sent to Tamarack are first arraigned and conditions of release are set. Finally, Act 61 which was enacted last year, already creates a presumption in favor of diversion for first time offenders in adult court and requires States Attorneys who choose not to send a first-time offender to diversion to explain on the record why he/she has chosen not to. The Attorney General's office is mandated to keep track of rates of diversion.

***Council Position on 4 and 5:** The Council supports:

1. Legislation that requires a risk/needs screening in every case involving young adults and requires the State' Attorney to consider the results in determining the appropriate case track – i.e. diversion, YO status, etc.
 2. Young adults should also receive a mental health screening (MAYSI), but only in cases where certain defined indicators are present. DCF/DOC should work to develop a description of indicators that would trigger a mental health assessment.
 3. The Council supports the use by DOC/DCF of the same screening/assessment tool, we take no position with respect to whether it should be the YASI or the ORRAS. It should be up to DOC and DCF to work that out.
 4. Young adults should be offered diversion or Tamarack if the young adult's score on the risk/needs screening is at or below a predetermined level appropriate to the program - i.e. the level would be higher for Tamarack than for diversion.
 5. Judges should be authorized to order diversion even when diversion is not recommended by the state's attorney. *
6. *Require that young adults receive a risk assessment prior to disposition, the results are shared with the court, and that the court consider the results to inform disposition decisions.*

Council Position: The Council supports a required risk and needs assessment for all youth and young adults. We recommend that the Youthful Offender statute be amended to require the

results of a risk and needs assessment to be included as part of the Report from the Department prior to the court hearing in the Family Division as to whether YO status is appropriate. See 33 V.S.A. §5282(b).

7. *Further evaluate the need for additional family court judges and staff to accommodate the growth in delinquency and YO cases.*

Council Position: The Council takes no position on this recommendation.

B Ensure that Resources are used efficiently to provide appropriate and effective supervision to young adults – potential legislative changes:

1. *Eliminate the current dual supervision status for YOs.*

Council Position: While the Council would support the designation of a “lead Department” in each case, the Council strongly opposes the elimination of the dual supervision status for Youthful Offenders.

2. *Establish minimum and maximum lengths of time young adults can be placed on community supervision and in facilities based on the severity of offense and assessed risk to reoffend.*

Background: DCF has already developed new guidance in the form of policy with respect to the expected duration of probation. DCF, DOC, the PD and the State’s Attorney’s office, already working on changes to the juvenile probation certificate which would set a defined period of time for probation. (Judges can currently set an end date for probation or order that probation last until the family court loses jurisdiction.) Legislation that has set minimum terms for incarcerative sentences has historically led to longer sentences.

Council Position: Changes are already underway that should result in shorter probation periods for young adults. These changes should be allowed to take hold first before considering whether it is necessary to mandate a particular length of probation for particular offenses or for a particular outcome on a risk assessment. The Council would oppose mandatory minimums for lengths of time spent in a facility. History has shown that these types of minimums tend to lengthen rather than reduce the amount of time served in a facility.

3. *Require that case level data be collected electronically on all young adults under supervision, including YO designation, supervision intensity, length of stay, service participation, and outcomes.*

Council Position: The Council supports the requirement of data collection by the Courts, DCF and DOC that can be collected within the constraints of the current IT systems for those entities. Risk level at entry and exit from the system should be included if possible.

4. *Require DCF/DOC to report on trends for YO status young adults including risk levels, length of stay, services provided and outcomes at least annually to state policymakers.*

Council Position: See Response to #3 above.

5. *Further Evaluate the need for additional resources for DCF leadership and staff to absorb additional delinquency and YO cases.*

Council Position: The Council takes no position on this recommendation.

6. *Further evaluate the need for additional resources to collect, analyze and report on DCF and DOC data:*

Council Position: The Council takes no position on this recommendation.

C Provide developmentally appropriate services for all youth and young adults, irrespective of which system supervises them-potential legislative changes

1. *Require a cross-system working group to examine available services for young adults across the state, related funding streams, cut-off points for care, and collateral consequences, and make recommendations to the legislature for improvement*

Council Position: The Council is already engaged in a state-wide project mapping the services available to youth and young adults (up to age 25). Once complete, the Council is willing to offer this tool and participate in a cross-system working group charged with assessing the system's capacity to meet the needs of youth and young adults statewide.

2. *Establish performance-based contracting provisions that hold service providers accountable for providing effective services and assess quality of services annually. Services found to be ineffective should not receive continued funding.*

Council Position: The State has already taken steps in this direction by requiring performance based contracts. The Council agrees that there should be a funding impact for failure to meet performance measures; however, funding that is taken away from a program that is not meeting performance requirements, should be reallocated to a better program that serves the same or similar purpose.

3. *Further evaluate the need for additional resources to ensure that appropriate services are available for youth and young adults in both the juvenile and adult criminal justice systems, potentially through the creation of a funding stream specifically for this purpose and shared by DCF/DOC.*

Council Position: We agree that there should be an adequate funding stream for services for young adults. The Council's mapping project will provide an excellent tool for identifying underserved areas that need more resources. See response to C.1. above.

D Additional Recommendations from Appendix B, C and D (Pages 36-38)

There are 13 additional recommendations in the Appendices on pages 36 through 38 which do not require legislation.

1. *Provide training for attorneys and other stakeholders on the value and purpose of risk/needs assessment, alternatives to court and YO status*

* **Council Position:** The need and the importance of training for all system players – judges, prosecutors, defense bar, DOC, DCF, and staff from community justice programs cannot be over-emphasized. From the Council's perspective, this should be one of the highest immediate priorities. (See Executive Summary) The Council believes that in addition to training, a manual should be developed to guide decision-makers regarding appropriate system responses to offenses by young adults based on the principles set forth in a legislative policy statement (see E.1. Below) and the results of risk/need assessments. *

2. *Specialized YO caseloads for State's Attorneys, DCF and DOC and provide specialized training for all program staff working with young adults*

* **Council Position:** The Council supports "Youth Thrive" training for all DCF and DOC staff working with young adults, including DOC staff at Marble Valley. Additional training will also be necessary, but common ground through the "youth Thrive" training is a good start. *

3. *Diversion: map diversion opportunities across the state, expand offerings for young adults based on screening/assessment tools and explore opportunities to share services between family and criminal court diversion options*

Council Position: Diversion services are already included in the Council Mapping Project. See C.1. Once completed, a cross-system working group should identify and address conflicts based on age-cutoff or other eligibility issues.

4. *Performance Measures: Establish performance measures related to outcomes for youth under DCF/DOC supervision*

Council Position: Performance measures should be developed by DCF/DOC.

E Council's Additional Recommendations

1. **The Legislature should adopt a "Legislative Findings and Purpose" statute that sets forth the public policy underlying Vermont's youth/young adult justice system.**

In implementing the new system, it would be invaluable to all of the players, including judges, state's attorneys, public defenders, DCF and DOC, to have the kind of policy guidance that a legislated "findings and purpose" statute could provide. The Legislature has enacted statutes of this type in the past, particularly when enacting the kind of major legislative changes similar to the changes embodied in Act 153. (See, for example, 15 V.S.A. § 650 related to child custody and support.) The following is offered as an example of a possible statement:

"The Legislature finds and declares as public policy that an effective youth justice system: protects public safety; connects youth and young adults to age-appropriate services that reduce the risk of re-offense; and, when appropriate, shields youth from the adverse impact of a criminal record. In order to accomplish these goals, the system should be based on the implementation of data-driven evidence-based practices that offer a broad range of alternatives such that the degree of intervention is commensurate with the risk of re-offense. High-intensity interventions to low-risk offenders not only decrease program effectiveness, but are contrary to the goal of public safety in that they increase the risk of recidivism. An effective youth justice system includes pre-charge options that keep low risk offenders out of the system altogether."

2. **Vermont should offer the opportunity for pre-charge diversion to low risk youth and young adults in every county.**

Pre-charge programs provide a valuable off-ramp prior to any court involvement for low risk/low need offenders. On the continuum of possible interventions, it represents the lowest level of intervention. Act 153 expanded this opportunity by including BARJ in addition to other options. State's Attorneys and law enforcement should be strongly urged to use this new option.

3. **Substance Abuse Screening**

Risk and need screenings for youth should include a substance abuse screening so that appropriate decisions can be made regarding assessment and treatment.

Background for Legislative Findings and Purpose Statement

With landmark criminal justice legislation in 2016 (HB 153), Vermont has created the real probability of an increasingly effective juvenile and young adult justice system. In translating the letter and the spirit of the new law, it becomes a moral and practical imperative to ensure that the reform efforts meet the three primary and essential overriding goals of the juvenile/young adult justice system:

- Enhancing public safety
- Providing for the habitation and positive development of juvenile and young adult offenders
- Achieving the above in the most cost-efficient manner possible

In order to achieve these outcomes, the justice system must be both “just” and practical; based on data driven and best practice implementation and innovation. One major way to accomplish this is through the utilization of effective “gate-keeping” practice - creating alternatives that allow the system to serve only the most appropriate offenders and creating opportunities to keep lower risk offenders away from formal involvement. This is the most basic tenet of the well accepted and verified “Risk Principle” concept.

The “Risk Principle” was first formulated over half a century ago. Simply stated, the risk principle says that, “The level of supervision and treatment should be commensurate with the offender’s level of risk.” That is to say, low-risk offenders should be provided with low-intensity treatment and high-risk offenders should be provided with higher-intensity treatment.

It is hard to imagine that providing services for young adult offenders could have negative outcomes; service provision seems as if it should be positive (or at least not actively detrimental) for all, regardless of their risk level. But as research shows, and as studies across the nation have conclusively depicted, adherence to the risk principle is not only vital to ensure that resources are appropriately prioritized, but also has an enormous effect on offender recidivism rates. Providing high-intensity interventions to low-risk offenders not only does not help, but does extensive damage to these offender’s outcomes.

Using the concepts of the “Risk Principle”, it becomes imperative to appropriately match services to a young offender’s risk (and need), to achieve positive justice outcomes. Accordingly, jurisdictions are encouraged to develop some form of **Service Matrix**, to illustrate and guide their local matching process. The Service Matrix is a localized effort to articulate the range of available interventions, based on the assessed risk and need for a given youthful offender.

Involving low-medium risk young offers in the formal justice system (charging and adjudicating them) is bad for them and bad for the safety of the community.

Low-medium risk young offenders should be routinely diverted from formal system involvement. This provides both 1- better outcome for those offenders and 2- more realistic opportunities for the justice system to effectively serve higher risk offenders- by having the time capability and being able to use limited resources to effectively intervene with them.

“Right-sizing the justice system to be most effective for youthful offenders for youthful offenders means providing Diversion opportunities at each stage of potential system involvement: arrest, prosecution, Court intake and disposition. Diversion is often thought of as a “programming alternative” to probation

Cumulative data from hundreds of programs and dozens of meta-analyses show that not following the risk principle and placing low-risk offenders in high-intensity programs leads to significant decreases in program effectiveness and to increased risk of recidivism. Low-risk youthful offenders not only do not need high-intensity interventions, but putting them in those programs dramatically increases their likelihood of recidivating.

or placement, but indeed should include a range of responses including pre-charge options that keep low risk offenders out of the system altogether.