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Written testimony on S.23 and the Youthful Offender Provisions of H.95

Thank you for the opportunity to comment on S.23 and on the Youthful Offender provisions of H.95 (Act 153). The Defender General's office is supportive of S.23, the bill addresses some small technical issues that we discovered after H.95 was passed. Nothing in S.23 changes the substantive law or policy of H.95. It just reconciles some conflicting language and changes some terms to more accurately reflect the intent of H.95.

S.23 – Technical corrections to juvenile jurisdiction

Section 1

The changes in Section 1 accomplish two small corrections that are necessary clarifications in H.95:

- First, the change to 33 V.S.A. § 5102(9)(B) reconciles an inconsistency – H.95 gave the juvenile court jurisdiction over misdemeanor motor vehicle offenses, but those offenses were still excluded from the definition of delinquency. That was an oversight and it is appropriately corrected here.
- Second, the change to 33 V.S.A. § 5102(22)(G) gives DOC party status in Youthful Offender cases. This is necessary to make sure that the Department is not excluded from proceedings that require their participation because Youthful Offenders can be supervised by DCF, DOC, or both.

Sections 2 and 3

The change to these sections makes it clear that there is no criminal conviction in a Youthful Offender case unless and until the juvenile court determines that a youth has violated the terms of their Youthful Offender probation and also decides that their Youthful Offender status should be revoked. These changes will also ensure that youth are not placed on the sex offender registry unless and until their Youthful Offender status is revoked.

H.95 – Youthful Offender provisions

Youthful Offender charging decisions and the waiver of constitutional rights

Because a Youthful Offender adjudication can result in a criminal conviction and criminal penalties, young defendants are entitled to all the constitutional protections of the Fifth and Sixth Amendments. This means that by electing to take Youthful Offender status, a youth has to waive her right to a jury trial and to a public proceeding (all other Fifth and Sixth Amendment rights apply whether the case is in the juvenile or criminal division). As with any fundamental constitutional right, those rights can only be waived by the defendant by a personal colloquy with the judge. There is no need to put the colloquy requirement in statute, because the colloquy is constitutionally required, but there would also be no harm in adding it to the statute for the sake of clarity.

Because Youthful Offender status requires waiving constitutional rights, a youth cannot be forced to accept the status. If a Youthful Offender charge is filed directly in the juvenile court and the youth does not wish to accept Youthful Offender status, she can simply refuse to waive her right to a jury trial and the charge would have to be filed in the criminal court.

Youthful Offender appeals

An adjudication in the family division as a Youthful Offender proceeds exactly like a delinquency adjudication and so youth are entitled to appeal the decision of the trial court after a disposition is entered (just like a criminal defendant can appeal a conviction after a sentence is imposed). Unless a stay is requested and granted, the disposition is implemented while the case is appealed.

Thank you,

Marshall Pahl