

Memorandum

To: House Judiciary Committee
From: Ken Schatz, DCF Commissioner
Re: S.232
Date: June 12, 2020

Thank you for taking testimony on S.232. This bill proposes changes to the juvenile delinquency laws in order to implement Vermont’s historic Raise the Age legislation, Act 201 (2018). As of July 1, 2020, per Act 201, Vermont includes most offenses, except the more serious Big-12 offenses, committed by 18-year-olds in its juvenile delinquency system. As of July 1, 2022, 19-year-olds will be included. We appreciate that the recommendations for legislation from DCF’s Act 201 report are included in this bill.¹

DCF supports the bill as passed by the Senate. Please see the table below for specific comments for each section of the bill.

Bill Section	Topic	Comments/Suggested Amendments
Sec. 1	Tamarack program language in title 3	The expansion of the Tamarack program was one of the recommendations in the Act 201 report. DCF supports proposed language that ensures access of 18-year-olds to this program.
Sec. 2 & 3	33 VSA §5103 Jurisdiction	DCF supports the extended jurisdiction of 18 and 19-year-olds as drafted in this bill in §5103(c)(2)(A) and as approved by the Senate. This was one of the recommendations in the Act 201 report. This section also clarifies the type of custody that is conferred to the Commissioner for those individuals 18 years and older.
Sec. 4	33 VSA §5102 definitions of “custody” to include 18 and 19-year-olds	One of the more substantive recommendations in the Act 201 report was to include a definition in law of “custody” that will apply to 18 and 19-year-olds when Vermont raises the age of juvenile jurisdiction. DCF appreciates that this recommendation was included in S.232. Current Vermont law has one definition of custody that applies to children and youth subject to the juvenile proceedings act, “legal custody”. The Act 201 report and this bill both proposed a separate definition for 18 and 19-year-olds of “physical custody”, recognizing that this age group consists of individuals who are not minors and that DCF is not acting as the parent of these individuals.

¹ <https://legislature.vermont.gov/assets/Legislative-Reports/20191101-Vermont-RTA-DCF-Report-Final.pdf>

Bill Section	Topic	Comments/Suggested Amendments
Sec. 5	33 VSA §5204a Jurisdiction for Crimes Committed Under Age 18	This section establishes jurisdiction for crimes committed between ages 17 and 18 but are not filed until after age 18. It further limits the timeframe in which these cases can be filed, establishing an upper limit to the filing of age 19. This section also establishes a limit on jurisdiction at age 20.
Sec. 6 & 7	33 VSA 5206 Citations	This section is intended to outline to which division (Family versus Criminal) law enforcement officers should cite cases and replaces the upper limit of age 18 with age 19. It also removes listed crimes from the types of cases where law enforcement is not required to cite to the family division.
Sec. 8	33 VSA §5280 Commencement of YO proceedings	This language proposes to exclude Big 12 offenses that are the subject of a YO petition from the presumption of diversion.
Sec. 9	33 VSA §5287 Termination or Continuation of YO Probation	This proposed language removes the requirement for a hearing when YO probation is being proposed to be discharged. DCF supports this simplified approach as it may cut down on the number of hearings that the Family Division is required to hold. Hearings on contested motions for termination of YO probation will still occur. Hearings will no longer be required when all the parties stipulate to the termination of YO probation (similar to delinquency cases now). DCF's expectation is that victims will continue to have a voice in these decisions through the local SAs offices.
Sec. 10	33 VSA §5291 Detention or Treatment in Secure Facilities	One of the recommendations in the Act 201 report was to review chapter 52 of title 33 in order to make technical corrections to reflect the fact that 18 and 19-year-olds will be included in the delinquency system. The changes proposed in this section are consistent with that recommendation for technical corrections. This proposed change provides that 18 and 19-year-olds placed in secure treatment or detention through DCF custody will be afforded the same due process protections afforded to youth under age 18.
Sec. 11	28 VSA § 1101 Powers and Responsibilities of the Commissioner Regarding Juvenile Services	This section eliminates the word "separate" in order to make clear that separate buildings are not required, only appropriate facilities.
Sec. 12	Reduction in Force of Woodside Employees	This section dictates that the Department will engage in bargaining with employees at Woodside to determine when and how to modify the CBA as it relates to any reductions in the work force. The Department supports this provision.

Bill Section	Topic	Comments/Suggested Amendments
Sec. 13	Population Funding Commitment, Woodside	This section outlines the requirements the Department and AHS will fulfill prior to closure of the Woodside facility, as well as the amount of general funds that are allocated to serve this youth population who require alternative services, should Woodside no longer be available.
Sec. 14	AHS Plan for Youth with Mental Health Disorders	This section directs AHS to develop a plan to serve this specific youth population and sets a deadline of January 15 th , 2021 to present this plan to the legislature. AHS has a comprehensive mental health system of care that provides services to youth with severe mental health disorders. The report back to the General Assembly will therefore outline the services that are available, with a specific focus on justice-involved youths with severe mental health disorders.
Sec. 15	Formerly "Appropriation" now "Funding Intent"	This section outlines the legislature's intent to provide funds for appropriate juvenile detention options, and due to the Covid-19 epidemic establishes guidelines for a transitional process through which to approve these funds.