

## Memorandum

**To: Senate Judiciary Committee**  
**From: Ken Schatz, DCF Commissioner**  
**Re: S.232**  
**Date: February 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.<sup>1</sup>

DCF supports the changes in this bill but suggests a few amendments. 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 it understands will be presented by David Scherr, Assistant Attorney General, and that has been reviewed by the juvenile justice stakeholder group.
Sec. 2	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) – lines 3 through 6 on page 3. This was one of the recommendations in the Act 201 report.  To be clear that juvenile jurisdiction is not extended to 19 year-olds until 2022, the committee may want to consider making the effective date for the changes on lines 5 & 6 of page 3 effective 7.1.2022.
Sec. 3	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.

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

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		<p>DCF suggests a different approach, which is a single definition of “custody”, with specifications applicable to just 18 and 19-year-olds. Please also see suggestions for section 5 of the bill related to this same topic of custody of emerging adults in the delinquency system. Suggested language for “custody” is as follows:</p> <p>33 V.S.A. §5102 is amended to read:</p> <p style="text-align: center;">* * *</p> <p>(16)(A) <u>“Legal Custody”</u> means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters <u>for children under 18 years of age</u> <del>which that</del> invests in a party to a juvenile proceeding or another person the following rights and responsibilities:</p> <ul style="list-style-type: none"> <li>(i) the right to routine daily care and control of the child and to determine where and with whom the child shall live;</li> <li>(ii) the authority to consent to major medical, psychiatric, and surgical treatment for a child;</li> <li>(iii) the responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care; <u>and</u></li> <li>(iv) the authority to make decisions <del>which that</del> concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the U.S. Armed Forces, and the authority to represent the child in legal actions.</li> </ul> <p>(B) If <u>legal-custody of a child under 18 years of age</u> is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.</p> <p>(C) <u>“Custody” for individuals who are 18 years and older means the status created by order of the court under the authority of chapter 52 of this title that invests in the Commissioner the authority to make decisions regarding placements.</u></p> <p style="text-align: center;">***</p>
Sec. 4	33 VSA §5206 Citations	<p>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.</p> <p>As a further amendment, DCF also suggest also amending language effective 7.1.2022 to include citation of 19-year-olds. The bill only makes changes in law effective 7.1.2020 related to the addition of 18-year-olds.</p>

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Sec. 5	New proposed §5279 for “physical custody” of 18 and 19-year-olds	<p>This was one of the substantive recommendations in the Act 201 report, which would enable DCF to be granted custody of 18 and 19-year-olds in the juvenile delinquency system when necessary and appropriate. Consistent with section 3 of the bill above, the authority for “custody” for 18 and 19-year-olds would be limited to the authority of DCF to make decisions regarding placements.</p> <p>DCF appreciates the approach that is included in this bill, but recommends that rather than this approach it may be worth considering whether specific language is necessary in the different sections of chapter 52 of title 33 to allow courts to order custody to the DCF Commissioner of 18 and 19-year-olds at different stages and points of a delinquency case, Emergency Care Order, Temporary Care Order, Disposition and Post-Disposition Violations of Probation. It may be that the proposed changes in section 3 of the bill detailing the definition of “custody” of 18 and 19-year-olds is sufficient and no additional language other than what is proposed in section 3 of the bill is needed.</p>
Sec. 6	33 VSA §5280 Commencement of YO proceedings	<p>This language proposes to exclude Big 12 offenses that are the subject of a YO petition from the presumption of diversion.</p>
Sec. 7	33 VSA §5287 Termination or Continuation of YO Probation	<p>This proposed language removes the requirement for a hearing when YO probation is being proposed to be discharged. DFC 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.</p> <p>It appears that more language than is necessary is being proposed to be struck in the bill. DCF suggests the following language for this section of law. This includes a new paragraph (f) similar to language in the delinquency laws that also provides that probation is terminated at the end of the probation period.</p> <p>Sec. 7. 33 V.S.A. § 5287 is amended to read:</p> <p>§ 5287 TERMINATION OR CONTINUANCE OF PROBATION</p> <p>(a) A motion <u>or stipulation</u> may be filed at any time in the Family Division requesting that the court terminate the youth’s status as a youthful offender and discharge him or her from probation. The motion may be filed by the State’s Attorney, the youth, the Department, or the court on its own motion. <del>The court shall set the motion for hearing and provide notice and opportunity to be heard at the hearing to the State’s Attorney,</del></p>

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		<p><del>the youth, the Department for Children and Families and the Department of Corrections.</del></p> <p>(b) In determining whether a youth has successfully completed the terms of probation, the court shall consider:</p> <ol style="list-style-type: none"> <li>1) the degree to which the youth fulfilled the terms of the case plan and the probation order;</li> <li>2) the youth’s performance during treatment;</li> <li>3) reports of treatment of personnel; and</li> <li>4) any other relevant facts associated with the youth’s behavior.</li> </ol> <p>(c) If the court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the Family Division case. The Family Division shall provide notice of the dismissal to the Criminal Division, which shall dismiss the criminal case.</p> <p>(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the Criminal Division shall be expunged, and all records relating to the case in the Family Division shall be sealed pursuant to section 5119 of this title.</p> <p>(e) If the court denies the motion to discharge the youth from probation, the court may extend or amend the probation order as it deems necessary.</p> <p><u>(f) Upon the termination of the period of probation, the youth shall be discharged from probation.</u></p>
Sec. 8	33 VSA §5291 Detention or Treatment in Secure Facilities	<p>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.</p>