

December 9, 2021

This memo describes the challenges facing the Department for Children and Families' (DCF) in its care for justice-involved youths and its proposals to address these challenges. This memo addresses each challenge and proposes DCF's recommended solution, with focus both on community safety and the unique needs of juveniles involved in the justice system.

1. Delay implementation of Act 201

Act 201 raised the age of justice-involved youths who could have their cases heard in the juvenile courts. At the time of Act 201's passage, the system was not facing the challenges that it currently faces as a result of the covid-19 pandemic. In order to fully implement Act 201, DCF needs a number of things: A data system that can adequately track the cases that we have already had, as well as those coming to us, a significantly improved employment market, a reduction in covid cases in our partner facilities, and expanded bed capacity for youth in crisis. Until we see improvements in those areas, DCF cannot assure that a new system would be robust enough to ensure success.

Proposed Solution:

DCF proposes delaying the second phase of implementation of Act 201 (delinquent charges of 19-year-olds processed in the juvenile system) until workforce and facility needs are met. DCF will commit to regular reporting on the status of pending implementation. DCF intends to continue to file an annual report throughout implementation, as provided in Act 201, in order to continue to provide the Legislature and stakeholders with needed information about both successes and continued challenges.

2. Expand the crimes that are excluded from consideration in the family division.

At present, most youths are able to have their case originate in family court for all crimes other than the Big 12 (See 33 V.S.A. §5204). However, many behaviors that are difficult for DCF to manage are outside this narrow list of charges, including such crimes as first and second degree aggravated domestic assault and drug related crimes, in addition to many others that are "listed crimes" within 13 V.S.A. §5301. Notably, DCF is experiencing an increase in the dangerousness of some youths due to their access to firearms.



Proposed Solution:

DCF proposes expanding the list of crimes that are statutorily excluded from direct filing to include Reckless Endangerment, found at 13 V.S.A. §1025, and Domestic Aggravated Assault, found at 13 V.S.A. §1043. It should be noted that DCF's prior position was to include all 31 Listed Crimes found at 13 V.S.A. §5301, but has since determined these two charge types are the ones most often associated with crimes that represent a level of risk to the community where DCF may be ill-equipped to provide for public safety.

3. Clarify standards for revocation of youthful offender status.

DCF's experience with youths who have YO status is that the standards for the revocation of YO status are unclear and applied inconsistently throughout the state. In some counties, the YO status of a youth will be revoked upon the first and any violation, while in other counties even multiple violations will not cause a revocation of YO status. This lack of statutory guidance on the standard for revocation of YO status creates difficulty for DCF and for the youths themselves. For the youth, lack of understanding about what they need to do and learn in order to get out of the justice system can allow them to make choices that create more problems for themselves, in addition to squandering the opportunities for support and services that DCF and its community partners can provide. For DCF, the continuation of behaviors while on YO status, without a mechanism to bring those to the court in a timely manner, has led to situations where DCF simply does not have the capacity or authority to work with the youth in a way that can protect either the youth or the community from the consequences of their actions.

Proposed Solution:

DCF proposes in unusual circumstances and in the case of imminent emergency, DCF or other party may file for immediate revocation of youthful offender status and a court must hold a hearing within 48 hours. For instance, if a youth is charged in criminal court with a new violent or weapons related offense.

4. Ensure that youths take responsibility for the actions that led to the charge.

When a youth is placed on YO status, DCF must work with the youth to address the underlying behavior that led to the charge, in addition to assisting them with their transition into adulthood. Prior to juvenile jurisdictional reform efforts, youth were required to admit responsibility for their actions before they could be placed on YO status. Youths now are being granted YO status prior to an adjudication or their acceptance of responsibility for their actions. Consequently, DCF is required to work with some youths who do not fully accept or acknowledge that they committed the offense. Because much of DCF's successful engagement with youth hinges on the youth addressing the issues that brought them into the system, there are cases in which DCF cannot utilize assessment to its full capacity or identify all needed services.

Proposed Solutions:

DCF proposes returning to the practice of requiring a youth to enter a condition plea of guilty in the criminal division prior to transfer for consideration of YO status. 13 V.S.A. §5281. This creates an incentive for the youth to fully engage in the YO process, to take advantage of the services provided, and to provide honest, complete information to those working to help the youth address underlying challenges.

In the alternative, DCF proposes that the statute be amended to provide that YO cases are filed as sealed, so they are protected from public release. This would provide the confidentiality of a YO case while the case is being considered as a YO. There could be consideration of filing all YO eligible cases as sealed so if they are transferred for YO status they are protected from collateral consequences. If the cases are not transferred after the first hearing, then they are “opened”.

5. Youths currently on YO status should not be permitted to stay on YO status if they commit new offenses eligible for YO status.

Every time a youth is referred for YO status, there is a requirement for the completion of the YASI. If the case is not referred to Diversion, DCF completes a YO Consideration Report. The Court holds a Consideration hearing and if YO status is granted the case is then set for a Merit’s hearing. Assuming Merit’s is found, the case is then set for Disposition. Every time a youth is referred for YO consideration this process occurs regardless of whether or not the youth has had previous denials or revocation of YO status. This is a lengthy process for not only DCF, but also the parties involved, and the Court time used for the hearings. Some youths who allegedly commit crimes while already on YO status are nevertheless being referred for YO status concurrently. The dramatic uptick of youthful offender referrals (from 33 in FY18 to 504 in FY19) has placed burden on DCF and court systems.

Proposed Solution:

DCF proposes that the statute be amended to allow for a court to review and reject a new YO case on motion or direct file based on one or more prior denials of YO status due to concerns of public safety or amenability to treatment. This change not only works with youth to help them understand the impact of their decisions as a whole, but should also create efficiencies in the courts by reducing the number of cases that are set for YO consideration, merits or disposition hearings and then continued.

6. Youths who are violent, high-risk offenders should not be eligible for YO consideration.

As DCF noted above, we are seeing an increase in gun activity and violent crime in some of the youths who are coming into our system. These youths are coming before the court for YO consideration. Although the statute currently requires that a court consider public safety when determining whether to place a youth on YO status, there are no specific statutory requirements for that consideration.

Proposed Solution:

DCF concurs with the proposal made in the Senate Judiciary Committee bill for addressing this problem. In addition to the eight factors listed in that proposal, DCF also recommends including factors that measure history of violence, firearm use, and community connections.

7. Some youths are not receiving notice to complete the YASI screening tool.

Youths being charged being do not always receive notice that they must appear for a screening prior to the preliminary or YO consideration hearing. As a result, the YASI is not completed, and hearings are delayed or continued as a result. Currently there is no mechanism to ensure the youth has received notice of the need for screening. This results in potential missed opportunities for cases to be diverted, or delays in court process as the court may allow more time for the youth to complete the screening.

Proposed Solution:

DCF proposes a legislative amendment that states that the Court will provide notice to youths (both delinquencies or YO) of the need for completion of the screening or possible denial of YO status if they do not complete the screening, as well as information on how to access the assessment.