



STATE OF VERMONT
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS
Office of the Executive Director

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This memo outlines a proposal by the Department of State's Attorneys and Sheriffs ("Department") to improve the statutes pertaining to delinquency and youthful offender proceedings. Those statutes are contained in 33 V.S.A. Chs. 51, 52, and 52A. This memo outlines the problems the proposal is designed to address, provides examples of those problems, and includes a framework of one potential solution. The Department remains committed to discussing this and other potential solutions with the legislature and other stakeholders.

Problem: 33 V.S.A. Chs. 51 (General Provisions), 52 (Delinquency Proceedings), and 52A (Youthful Offenders) are unnecessarily complex, which leads to many potential problems. The most important of these include:

1. An insufficient number of secure placement options for individuals aged 18-22.
2. A defense attorney could assert that neither the Family nor Criminal Divisions have jurisdiction over 19-21-year-olds who commit misdemeanor delinquent acts.
3. Individuals subject to delinquency and YO proceedings may have difficulty understanding the laws that apply to them.
4. Some subjects, such as confidentiality, are addressed in multiple statutory sections forcing the reader to either follow multiple cross references or simply survey entire chapters to make sure they are aware of all sections dealing with the subject.
5. The confidentiality of some proceedings makes it difficult if not impossible for victims and the State to refute the public dissemination of misinformation.
6. This confidentiality also makes it difficult to have meaningful conversations about bail and conditions of release when a youthful offender on probation faces new charges in the Criminal Division.
7. This confidentiality also sometimes makes it difficult for victims to engage with victim compensation and restitution programs.
8. The Department has received reports that some victims have been concerned they could get in trouble for talking about their experiences because of these confidentiality provisions.
9. Some subjects relevant to both delinquency and YO proceedings, such as expungement, are dealt with inconsistently without any apparent policy justification.
10. The reliance on Big 12 and Listed Offenses as surrogates for when certain things should or may occur unnecessarily risks excluding offenses that have a tremendous impact on victims and the community. Such offenses may include: hate motivated crimes, 13 V.S.A. § 1455; first degree arson in which a defendant burns down another's home, 13 V.S.A. § 502; domestic terrorism, 13 V.S.A. § 1703; slave traffic, 13 V.S.A. § 2635; and female genital mutilation, 13 V.S.A. § 3151 to name just a few.

11. Individuals who commit incredibly impactful crimes may still age out of Family Court jurisdiction before they can be apprehended, charged, and fully prosecuted. This deprives the individual of the rehabilitative services juvenile proceedings are designed to provide and, in some cases, may put public and victim safety at risk.
12. Due to the limitations on when the State can direct file YO petitions, sometimes to obtain YO status the State needs to file a delinquency petition, move to have the case transferred to the Criminal Division, and then file a motion for youthful offender status.
13. Since there is no express authority for the Court to order a youth complete a psychosexual evaluation, it is difficult to obtain a reliable risk assessment for youths charged with sex crimes.

Example(s): The following examples illustrate some of the above problems:

1. In the beginning of September, a juvenile defendant needed a secure facility pending the adjudication of his criminal charges. As indicated in the Department's July 13, 2021 letter to the Joint Legislative Child Protection Oversight Committee, Vermont's State's Attorneys, Vermont's Sheriffs, and the Department of Children and Families have been able to work together in such situations to find a secure placement. However, because such placements are not readily available in Vermont, it occasionally takes a long time to make the necessary arrangements. In this instance, it resulted in the juvenile having to spend an entire night in a municipal police department.
2. In one county, a juvenile defendant committed a crime involving sexual misconduct against a juvenile victim. The juvenile defendant was granted YO status. Afterwards, that defendant represented in school and in the community that the charges had been dropped even though they were still being adjudicated in the Family Division. The juvenile victim and her family were forced to try to refute these claims on their own because the confidentiality provisions regarding YO proceedings prevented the State from acknowledging the case was still pending. The Department is concerned that its inability to address situations like this may disincentivize some victims from coming forward with allegations against juvenile defendants.
3. An individual one day away from their 20th birthday who sets a bomb in the State House in violation of 13 V.S.A. § 1601 would have to be apprehended, charged, and fully prosecuted in less than one year. Notably, it has already been over 10 months since an individual placed bomb near the Democratic and Republican party headquarters as part of the January 6th Capitol riots and, to the public's knowledge, the identity of that individual has not been detected.
4. Recently a defense attorney represented during a conversation about bail and conditions of release that a defendant charged in the Criminal Division had no experience with the criminal justice system even though the defendant had been adjudicated a youthful offender and allegedly violated probation. The judge would not consider information filed under seal that contradicted this representation.
5. Recently a youth charged with committing two sexual assaults against two different juvenile girls in two different counties sought YO status. It is likely that the recommended rehabilitative programming will last 18.5 months, the case has not been fully adjudicated, and there is only 18 months left before the youth ages out of jurisdiction. As a result, the youth may either be denied YO status for lack of available services or age out of YO jurisdiction before completing the recommended programming.

Solution: The following statutory amendments could address these issues:

1. Restrict Chapter 51 to only those provisions that apply equally to Delinquency, YO, and CHINS petitions; restrict Chapter 52 to only those provisions that apply to Delinquency petitions; and restrict Chapter 52A to only those provisions that apply to confidential YO proceedings in the Criminal Division. Whenever possible address a topic in a single statutory section and number the sections sequentially.
2. Restrict YO proceedings to 18-22-year-olds and change the venue where they take place to the Criminal Division rather than the Family Division.
 - a. The initial appearance and arraignment would be open to the public just like YO determination hearings for 18–22-year-olds are public pursuant to 33 V.S.A. § 5283(c)(2). At the arraignment, the Court would decide whether to designate the prosecution confidential after balancing factors such as the nature of the charges, the circumstances in which the offense was committed, the input of any victims, the impacts of a confidential designation on victim and public safety, the public’s interest in the adjudication of the charges, and the results of any risk assessments that have been conducted.
 - b. Consider including in 33 V.S.A. § 5284 a non-exhaustive list of factors that courts must consider when determining whether YO status will protect public safety. These factors could include things like the nature of the alleged offense, the circumstances in which the alleged offense was committed, the offender’s criminal record (including any prior juvenile adjudications), the input of any alleged victims, recent history of actual violence or threats of violence, and the results of any risk assessments that have been conducted.
 - c. The State should be able to refute the dissemination of public misinformation under a standard derived from Vermont Rules of Professional Responsibility 3.6(c).
3. Restrict delinquency proceedings to individuals who are alleged to have committed an offense when they were younger than 18 years old. If the individual is not apprehended before his or her 18th birthday, permit charges to be filed in the Criminal Division, but also permit the Criminal Division to transfer the case to the Family Division based on a standard derived from 33 V.S.A. §§ 5204a(b)(2)(A) and 5205a(b)(4).
4. Require that individuals aged 10-14 who commit any offense would be subject to a delinquency petition.
5. Develop a list of enumerated offenses that is larger than the Big 12 and Listed Offenses. Individuals aged 14-18 who commit an offense aside from an enumerated offense would be subject to a delinquency petition. These cases could be transferred to the Criminal Division if a standard derived from 33 V.S.A. §§ 5204(c) and (d) is met. Individuals aged 14-18 who commit an enumerated offense would be charged as an adult. However, the case could be transferred to the Family Division under a standard derived from the one in 33 V.S.A. § 5284.
6. Allow the Family and Criminal Divisions to retain jurisdiction over juveniles until the case is fully adjudicated and the term of supervision has expired.
7. Apply the same opportunities for delinquent children and youthful offenders to have their records sealed (not expunged) upon successful completion of the sentence. Sealed records could be used in subsequent cases, at a minimum, during sentencing and when making bail and conditions of release determinations.
8. Retain the existing standards for diversion referrals for non-enumerated offenses: a referral would be made if the individual is low or moderate risk to reoffend and the prosecutor doesn’t state on the record why a referral doesn’t serve the interests of justice. 33 V.S.A. §§ 5225 and 5280.

9. Include the existing restrictions on holding individuals in adult facilities, but eliminate the requirement in 33 V.S.A. § 5292 that delinquent children can't be housed in an adult facility unless such confinement is necessary for public safety and protection *and* they are charged with a crime punishable by life imprisonment. If an individual is that dangerous, it is not clear why the nature of the crime is relevant as their continued confinement in a secure facility for minors could be dangerous for the other minors in the facility.
10. Explicitly state that courts may order psychosexual evaluations for individuals charged with sexual offenses, including at a minimum those listed in 28 V.S.A. 204a(a).
11. The victim compensation and restitution programs should have access to otherwise confidential records for the purpose of administering those programs. This may require revisions to 33 V.S.A. §§ 5119(i) and 5235(k)(3) and potentially other statutes.
12. Victims should have the same rights that they do in criminal prosecutions, and it should be made clear that they will not face sanctions if they talk about their experiences (including impacts from the juvenile proceeding itself) with treatment providers, victims' advocates, prosecutors, law enforcement, and other supports such as their families. This may require revisions to 33 V.S.A. § 5110(c) and potentially other statutes.