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To: Members of the Senate Judiciary Committee
From: Jennifer Poehlmann, J.D.
Executive Director, Vermont Center for Crime Victim Services
Date: November 4, 2021
RE: Raise the Age/ Youthful Offender/ Juvenile Delinquency (§5534) proposal

The Vermont Center for Crime Victim Services is truly grateful for the opportunity to participate in this Committee's thoughtful consideration of the various approaches to working with young people who have committed a crime. From our perspective, rehabilitation of the young person who caused the harm and reparation for a victim are not mutually exclusive, and both goals can be achieved through a system that supports the needs of both.

While a just system must necessarily consider the age and development of a young person, there must also be an acknowledgement of the fact that the harm caused to a victim is no less simply by virtue of the age of the actor. While victims and survivors may vary on "what justice looks like" to them as an individual, there is clear unanimity that victims and survivors want and deserve information, notification, and to be heard. Our proposal is focused on making these three tenets as much of a reality as possible in consideration of the age and developmental level of the young person.

We therefore respectfully submit the following for your consideration:

- A victim's **right and ability to be reimbursed for crime-related expenses** through the Victim's Compensation Program should not be compromised by the sealing of a juvenile's record post-disposition. While there is some recognition given to this within 33 VSA §5119(i), the current carve out is insufficient. We are requesting that this provision be amended by adding language that "authorizes the Victim's Compensation Program to receive a redacted copy of the affidavit for the sole purpose of verifying expenses submitted in a victim's compensation claim as provided within 13 VSA §5351."

- A victim's **right to restitution** should not be compromised by the nature of the proceedings.
    - A Restitution Judgement Order is necessary for the Restitution Unit to be able to collect restitution and enforce a claim; currently, it is practice in many instances to simply hand that determination over to another entity. We would propose that 33 VSA §5235(e) as it currently stands be replaced with language similar to the following: "In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the Court shall fix the amount thereof and establish a restitution payment schedule for the juvenile based upon the juvenile's

current and reasonably foreseeable ability to pay, subject to modification under section 5264 of this title."

- Amend §5235(k)(3) "For purposes of this subsection, a restitution order issued in a juvenile proceeding shall not be confidential. The sealing of a juvenile's record shall not effect the ability of the Restitution Unit to seek enforcement of the restitution judgment order in the same manner as a civil judgment as established in 13 VSA 7607(c)(1)."

- Victims in these cases should have the **right to information pre-charge**. This could be accomplished by importing 13 VSA §5314 and amending the terminology so it is applicable to juvenile matters. Alternatively, language that was included within S.107 as passed by both bodies establishing "a public agency may disclose identifying information relating to the initial arrest of a person under 19 years of age in order to protect the health and safety of any person." might be an alternative way of accomplishing this; this could be narrowed further to limit it to a victim of record.

- Victims, whether it be a delinquency under §5534, YO or Raise the Age, should be entitled to **the same right to know the conditions of release** whenever the conditions relate to the victim or a member of the victim's family or current household including language "or other conditions as the court in its discretion finds necessary."

- Victims should also have the same rights to notification of release of a youth from a residential facility, including information concerning any conditions of release that pertain to the victim, victim's family or members of the victim's household. Additionally, victims should have the same right to **notification of the conditions of a youth's probation** as they relate to the afore mentioned and the termination of probation for the youth.

- Victims in all these cases should have **the right to have a Victim Advocate** or support person to accompany them to any pre-dispositional and dispositional hearing, deposition, or merits hearing where the victim is ordered or chooses to be present.

- Victims should be able to speak with support people about the harm they experienced without fear of criminal prosecution. While certainly this should not encompass information pertaining to the juvenile's history, treatment plan etc., currently it is not uncommon for victims to be warned about the possibility of prosecution regardless of the information they want to share about their own experience. In consideration, we are requesting two specific changes:
  - Strike 33 VSA §5234a(1)(B) "…..and that it is unlawful to disclose confidential information concerning the proceedings to another person."
  - Amend 33 VSA §5110(b) by striking the last sentence, moving the language therein to establish a new stand-alone subsection "d".

- Vermont Statute 33 VSA §5117(a) should be revisited for the single purpose of it linking victim rights to records post-adjudication to the commission of a "felony" if committed by an adult. The Legislature has historically tied victim's rights to listed crimes, including within Title 33. There are many serious crimes,

especially of an interpersonal nature, that are misdemeanors and are "listed crimes". This provision should comport itself with the rest of what is currently in statute.

- Victims in delinquency proceedings involving a listed crime (13 VSA §5234) should have the same rights to attend hearings as established for victims in youthful offender proceedings under 33 VSA §5288(a)(2).

- Under 33 VSA §5234(a)(4), we are requesting that the words "Upon request…." be deleted, with the rest of the sentence allowed to remain as is. The right to notification should be an automatic right that a victim opts out of. This is in fact consistent with all the other provisions concerning a victim's right to notification. That this seemingly exists only within delinquency matters involving listed crimes makes it more puzzling, as victims currently lack a point person who they can reach out to for information post-disposition.

- Under 33 VSA §5288(b), victims are provided with the opportunity to be present and heard at a hearing on a motion for youthful offender status. This provision should also include that the victim has the right to advance notice of said hearing.
    - Victims should also be entitled to notice of a motion to transfer jurisdiction from the juvenile to criminal court.

- We agree with the majority of witnesses that 33 VSA §5584 should be amended to include a more specific definition of "public safety" in order to improve the consistency across the state in terms of how this provision is interpreted and implemented; this would also have the added value of promoting more transparency. If there is an amendment to this provision, we would ask that it include a reference that consideration be given to including the victim's right to be heard, as established within 33 VSA §5288. Even with this right explicitly provided in statute, we understand that in practice there continues to be a lack of understanding that victims do have rights in this area. Amending 33 VSA §5584 in this way may help underscore the Legislature's original intention.

- Many witnesses have spoken to the confusion and lack of clarity within our current juvenile code; this pertains also to the application of victims' rights provisions. Sections of Vermont law within Title 13, Chapter 165, established decades ago, and prior to the time when victims were provided with rights within Vermont statute in juvenile matters, may contribute to the inconsistency. We would recommend that in 13 VSA §5304(a)(2), the clause "other than victims of acts of delinquency" be stricken. Similarly, that the same clause be stricken from 13 VSA 5305(a). Reviewing our current laws under Title 33, these provisions no longer reflect the current state of the law as we read it.

Finally, we feel it is important to note the different organizational structures that exist within the State's Attorneys' offices, the Department of Corrections (DOC) and the Department for Children, Youth and Families (DCF). Unlike the State's Attorneys' offices and the DOC, DCF currently does not have dedicated individuals who support victims throughout the process when DCF has jurisdiction over a matter. This fundamental difference was noted in the November 2019 report to the Legislature on the Implementation of Act 201. As DCF is being tasked with additional and more serious cases, along with responsibility for older individuals, supporting DCF to be able to build capacity in this area should be a priority.

We look forward to having the opportunity to more fully discuss our proposals in the near future, and to continuing our collaborative work with stakeholders and policy makers on these important and complex issues.