



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

December 16, 2021

Introduction

This memo contains the Department of State's Attorneys ("Department") comments to Draft 1.1 of Drafting Request 22-0279 (the "Bill"). The Bill:

1. Proposes a one year pause to the expansion of juvenile jurisdiction to 19-year-olds;
2. Enhances the rights of victims in delinquency and youthful offender ("YO") proceedings; and
3. Makes several other modifications to those proceedings.

Generally, the Department supports the goals of the Bill, but believes that additional modifications could be made to further improve the functioning and outcomes of juvenile proceedings. Such modifications can also make 33 V.S.A. Chs. 51 (General Provisions), 52 (Delinquency Proceedings), and 52A (Youthful Offenders) easier to navigate by practitioners, the public, parties to juvenile proceedings, and victims.

One Year Pause

During its prior testimony and in its November 4, 2021 proposal, the Department did not advocate for a one year pause to Vermont's Raise-the-Age law (Act 201 of 2018). The Department has since reviewed the Department of Children and Families' ("DCF") December 9, 2021 proposal, which does advocate for such a pause, and agrees that a pause is appropriate if it will assist DCF and its State partners to acquire the services, facilities, and personnel needed to make the Raise-the Age law successful.

Victim's Rights

The Department's November 4th proposal contains two recommendations regarding victims:

1. 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.
2. 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.

Sections 3 and 4 of the Bill address the first of these recommendations. Sections 5 through 12 of the Bill make commendable strides towards addressing the second recommendation. Since submitting its November 4th proposal, the Department has been working with the Vermont Center for Crime Victim Services, the Vermont Network Against Domestic and Sexual Violence, and the Juvenile Jurisdiction Stakeholders Group to develop language to implement this second recommendation more completely. The Department has suggested statutory language to these entities and hopes it is possible to reach some form of consensus.

Miscellaneous Modifications

The Bill's miscellaneous modifications include:

1. Establishing criteria courts must consider when determining whether a YO designation will protect public safety;
2. Permitting the Criminal Division to preside over initial appearances in YO proceedings in some situations;
3. Permitting the courts to order psychosexual evaluations in some delinquency proceedings; and
4. Requiring DCF to prepare a report on secure placement options for juvenile and youthful offenders.

These modifications address some, but not all of the suggestions in the Department's November 4th proposal and will provide meaningful improvements in juvenile proceedings. However, the Department respectfully suggests that the following additions could make even more progress:

1. Rewrite 33 V.S.A. Chapters 51-52A so that:
 - a. Chapter 51 contains only those provisions that apply equally to delinquency, YO, and CHINS proceedings;
 - b. Chapter 52 contains only those provisions that apply to Delinquency petitions;
 - c. Chapter 52A contains only those provisions that apply to YO proceedings; and
 - d. whenever possible topics are addressed in a single statutory section and sections are sequentially numbered.

For example, one needs to review at least six separate statutes to find all the provisions related to the confidentiality of delinquency proceedings. The Department recognizes that a rewrite may not be possible before the legislature next adjourns, but is willing to work with other stakeholders and legislative counsel to accomplish it as soon as practicable.

2. In addition to the considerations in Section 13 of the Bill, courts should consider the following when deciding if a YO designation will protect public safety:
 - a. The circumstances in which the alleged offense was committed;
 - b. The offender's criminal record (including any prior juvenile adjudications);
 - c. The input of any alleged victims;
 - d. Recent history of actual violence or threats of violence; and
 - e. The results of any risk assessments that have been conducted.
3. Regarding the confidential nature of juvenile proceedings, there should be exceptions for:
 - a. The legislature so that it can access information that will help it evaluate prior policy decisions and make informed future policy decision;
 - b. The parties to submit deidentified unpublished trial court opinions for consideration in future cases;
 - c. The court when setting bail and conditions of release in other proceedings; and

- d. The State to refute the dissemination of public misinformation under a standard derived from Vermont Rules of Professional Responsibility 3.6(c).
4. Develop a list of enumerated offenses that is larger than the Big 12 and Listed Offenses that would influence when things must or may happen. Notably, DCF included a similar recommendation in its December 9th proposal.
5. Allow the Family and Criminal Divisions to retain jurisdiction over juveniles until the case is fully adjudicated and the term of supervision has expired. If the goal of juvenile proceedings is to rehabilitate juvenile offenders through the provision of services, permitting them to age out before they have fully engaged with those services is counterproductive and may do a disservice to the juveniles.
6. 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.
7. To address the “ping-pong” problem the Department has previously identified, permit the court presently presiding over a case to preside over any motion to transfer the matter to either the Family or Criminal Division. This will, for example, address the Criminal Division’s currently nominal role in converting a delinquency proceeding into a YO proceeding.

Conclusion

The Department greatly appreciates the legislature’s consideration of its recommendations and is always willing to provide examples illustrating their necessity (when possible given the confidential nature of juvenile proceedings) and work with legislative counsel on statutory language that can implement them.