



Department of State’s Attorneys and Sheriffs (“SAS” or “the Department”)

Comments submitted to the Joint Legislative Justice Oversight Committee on September 18, 2024, concerning “Raise the Age”

I. INTRODUCTION AND CONTEXT

In response to the inquiry from the Joint Legislative Justice Oversight Committee (“the Committee”) concerning Raise the Age” (“RTA”) moving into the next phase, the Department reached out to juvenile and youth practitioners¹ that work in Vermont’s family courts.² The responses provided below (see “SAS PRACTITIONER RESPONSES” below, under III) are submitted in an ongoing effort to offer insight from inside of Vermont’s family courts. It should be noted that names and counties have been removed to protect the confidentiality of Vermont’s family courts.³

II. BACKGROUND

As noted by Legislative Counsel, (see [Raise the Age Summary](#), Legislative Counsel, August 2024) Vermont has been in the process of implementing the RTA since 2018. RTA increases the maximum age when a young person who allegedly commits a crime is subject to jurisdiction as a juvenile in the Family Division versus as an adult in the Criminal Division. RTA does not apply to a list of what have been deemed “big” offenses under Title 33.⁴

The “big” offenses (“the Big 14”) enumerate those offenses which may be filed directly in the Criminal Division. The list was previously known as the “Big 12” but Act 125 (2024) made three additions and one subtraction to the statutory list of “big” offenses. “Big 14” offenses may be filed either into the Criminal Division (“adult court”) or filed directly into the Family Division (“family court”) under “Youthful Offender” status (“YO”). While the “Big 14” provides for a presumption that certain offenses may

¹ Respondents that provided comment to the Department were State’s Attorneys or Deputy State’s Attorneys. It should be noted that responses that have been provided here do not necessarily represent the views of the Department or individual State’s Attorneys. That said, the responses provided in this document, summarized by SAS staff during the September 18, 2024 hearing, are intended to provide value in the Committee’s review of this topic.

² The Committee had asked: “Can you help explain how Raise the Age works from a prosecutor’s perspective – how someone gets referred to family court or how the process can commence in family court, and how a prosecutor can decide how to proceed?” SAS informed the Committee that the Courts should speak to the process, but that SAS could outline perspective.

³ Responses below are submitted to the Committee in an ongoing effort to provide nuanced insight from inside of Vermont’s Family Court, without forfeiting the protections of a space that is confidential under Vermont law.

⁴ SAS maintains that the “big” offenses and “listed” offenses should not be used a proxy for all “serious” offense types. As of July 1, 2024, the “Big 14” now includes the following under 33 V.S.A. § 5204: (1) arson causing death; (2) assault and robbery with a dangerous weapon as; (3) assault and robbery causing bodily injury; (4) aggravated assault; (5) murder and aggravated murder; (6) manslaughter; (7) kidnapping; (8) unlawful restraint as; (9) maiming; (10) sexual assault; (11) aggravated sexual assault and aggravated sexual assault—and the following three offenses under (for 16 years of age or older only) 33. V.S.A. § 5201 (A) using a firearm while committing a felony; (B) trafficking a regulated drug;(C) aggravated stalking.

be filed in the Criminal Division, the list does not command nor mandate that a case remain in the Criminal Division (given that such offenses may be filed directly as YO into the Family Division or may be transferred by stipulation or other means).⁵

Before RTA, a person accused of committing a non-big offense could only be subject to jurisdiction as a juvenile in the Family Division if the youth committed the offense at the age 17 or younger. This meant that the maximum age for a juvenile offense in the Family Division was age 17.

- RTA Step 1. Effective July 1, 2020, the upper age limit was raised to a youth’s 19th birthday. Meaning, any accused person aged 18 or younger who committed a non-big offense would have their case start in the Family Division.
- RTA Step 2. Scheduled to become effective July 1st, 2022 (now April 2025), any accused person aged 19 or younger who commits a non-big offense would have their case begin in the Family Division. Act 160 (2022) extended the effective date of RTA Step 2 to July 1, 2023. Act 23 (2023) extended effective date of RTA Step 2 to July 1, 2024. Last session, Act 125 (2024) extended effective date of RTA Step 2 to April 1, 2025.

III. SAS PRACTITIONER RESPONSES⁶

RESPONSE #1:

- I support the goals of RTA, but at this point 30% of my delinquency cases that come in [involve persons who are 18+... and] 30% is not ballpark—I ran the numbers for delinquency cases submitted 7/1/23--6/30/24 and exactly 30% were 18+.

RESPONSE #2:

- At no fault of frontline DCF staff, I have observed that DCF [has not changed] anything major in their system (at least as far as I can tell) to account for the fact that they [no longer] just work with kids.
- The biggest problem I see is DCF not adapting ... [this is] not to blame the caseworkers, since this is a management-level problem, but I feel like most of the FSWs just don’t want to be working with [the 18+ population] and [instead they] push to close out cases and [raise concerns].
- Having facilities and programs would be wonderful. But at this point I would settle for youth/juvenile POs who are willing [and provided with the appropriate level of support] to try to work with people [in the 18+ population].

RESPONSE #3:

- Supports in the Community – I know at least here in [County X] when trying to rehabilitate a juvenile or get a juvenile connected with resources we are usually speaking about [County X] Mental Health, _____, BARJ, etc. My understanding now is that even without raise the age [Phase 2], our community resources have long waiting lists to even get an initial

⁵ Further, if a “big” offense is filed in the Criminal Division counsel for the accused may file a motion, and be heard at a hearing, requesting that the case be transferred to the Family Division as YO.

⁶ Names of respondents and county identification have been removed to protect confidentiality and encourage direct response.

appointment or screening. I wonder if anything has been done to ensure community supports have enough resources and funding to ensure they can handle this further expansion of raise the age.

- [County X] Family Court Specific – Currently our juvenile Court does not allow for ‘open cite dates’ ... juvenile court makes us ‘cite out cases.’ And these cite dates are months out. Currently if a juvenile were to pick up a delinquency [that person...] is not going to be heard in Court until November 25, 2024. With raise the age going into effect in April I am concerned that this could create backlog here in [County X] because we are opening up another age set that would come here to juvenile court. By way of background, our court only allows us to cite 12 juveniles a month to juvenile court. August, September, and October have had nearly if not all of those slots filled up. My concern [after the next phase of RTA) is whether the way our Court is set up, if we have the bandwidth to include these 19 year old misdemeanor cases in a way that doesn’t cause a huge backlog. The court does allow us in extreme cases to “flashcite” a juvenile into delinquency court but that is a conversation between the on-call prosecutor and law enforcement.
- Law Enforcement Training – concerned about law enforcement implementing this new update come April. I may need to go around to the various law enforcement agencies and do another “juvenile” training with this new update.⁷
- How Someone Gets Referred to Family Court –It depends on the age of the juvenile, the type of crime, and the facts and circumstances underlying the crime. There are times when we can choose (depending on the charge) to send it either to criminal court [big offenses], directly to family court as YO, or to juvenile court as a delinquency. An immediate example that comes to mind is a juvenile who is 16 and commits an aggravated assault, [and lets say it is in the ‘domestic context’]. We could charge a Big 12 [now a Big 14] agg assault and send [the accused] to criminal court or do a direct YO filing, or we could charge the accused with first degree agg domestic into juvenile court. In these cases where there are decisions of when to send and where, it typically depends on the underlying facts of the case and whether or not we are aware of previous violent history with the juvenile. I wish we could have a complete overhaul of the juvenile jurisdiction I have been working on a “cheat sheet” document with citations to the statutes to help my office when we get calls from law enforcement on where to cite cases, but of course this will change come April.
- Juveniles Already Involved in Delinquency Proceedings – [One further aspect] of Raise the Age that is tricky here is that there are some kids who are subject to delinquency proceedings already, are on juvenile probation, and still continue to commit new crimes. My concern is that with Raise the Age these same kids are going to keep breaking the law realizing that there are no real consequences in juvenile court for violating DCF probation and these kids will get the benefit of raise the age and continue to commit new crimes until they are 20. This is a small sect of juveniles here in [County X], maybe a handful. But it does have the adverse effect on local businesses where these kids keep stealing and will continue to steal with seemingly no consequences until they are 20.
- DCF Concerns – Specifically our DCF office is losing workers consistently. I believe the _____ (who handles juvenile delinquencies) have ___ workers and ___ supervisor, and come December that number will drop to ___ workers and ___ supervisor. Adding another sect of juveniles that DCF would supervise come April 2025 does give me concern because I don’t want the department to be overworked with having more cases than can be supervised.
- Secure Juvenile Facilities – My concerns with secure juvenile facilities really focuses on the 18 and 19 year olds committing repeat offenses that don’t necessarily meet criteria for them to be cited as a YO or into criminal court, but are still wreaking havoc on the public. With the kids who are under 18 I usually (much to DCF’s unhappiness) will bring the

⁷ It should be noted that SAS has no dedicated or fulltime training staff.

child into DCF custody accompanying the delinquency because the child frankly cannot be managed at home and is a continuing danger to the public. When they are 18 and 19, we can't ask for custody where DCF could put them into Depot Street for a night, or find another suitable living arrangement or sometimes residential treatment when warranted. Which realistically puts us with 18 and 19 year olds to have to hope they follow COR's, despite now being adults and not having to listen to their parents or have an authority figure ensuring they do follow the COR's. I can just imagine a scenario where juveniles are continuing to steal or damage businesses at 18 or 19, and the best we can do is put a condition of release on them. [Note, some judges do not impose juvenile CORs in YO and Delinquency cases].

RESPONSE #4:

- The simple version is that they have not done the legislative work necessary to make this a reality. They have neither the physical nor legal infrastructure to deal with this population and have not appropriated the resources necessary to achieve the stated goals.
- I would have no problem if this were another option allowed for charging and disposition... As structured however, [RTA] creates barriers and delays for circumstances which do not comfortably fit in family court due to safety or severity.
- This is a bad plan as currently structured and their focus on dcf is a focus on only part of the issue. Many cases will present no issue. Those that do will be the higher needs outliers. There is also no need [to further expand RTA] given the problematic but quasi functional YO option. RTA burdens overworked participants in the process with more hoops to jump through. It benefits no one as YO is already available. It jeopardizes victims, law enforcement, and yes defendants whose needs cannot now be met under this system without lengthy court proceedings.
- It is my belief that there is no mechanism, under Vermont law, that would allow DCF to take custody of someone who is over the age of 18 years of age.⁸

RESPONSE #5:

- I don't think we're ready for RTA. RTA requires the right resources to be able to serve offenders in this age group.
- RTA [Phase 2] would also [further] redefine [who] a juvenile is for the purposes of compliance with federal laws re: incarceration, which means we are very limited in what we can do to respond to violent crimes committed by anyone under the age of 20 – they cannot be incarcerated without a finding that it is in the interests of justice; they can only be incarcerated for 180 days⁹ pre-trial; and have to be sight and sound separated, which in VT typically works out to solitary

⁸ The respondent further noted that under: Title 33, Chapter, 52, Sec. 5251(2) which references Title 33, Chapter, 51 Sec. 5101 which says: '(C) Custody for individuals who are 18 years of age or 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.' Meaning, for those 18 years old or older (under a delinquency filing) the DCF commissioner may only approve placements, but DCF has no authority to detain or take custody of someone who is older than 18 years old.

⁹ A related response, concerning the 180-day issue, noted that according to the interpretation of some Vermont judges, applying federal law in the Vermont context, even for big offenses where a person has been charged as an adult, we are running into a 180-Day detention limitation issue if the person falls under the RTA umbrella. "This is a feature of the interest of justice ('IOJ') process that no federal law imposes on us, but rather that we have elected to impose upon ourselves. However, because of the nature of the federal law, and Vermont's decision to raise the age and not have a juvenile facility for people over 18 – issues arise in Vermont that do not appear to be present in any other jurisdiction that I can find."

confinement. According to the interpretation of some Vermont judges, RTA changes the definition of juvenile, even for Big 14 crimes in this respect. There is not an exception for Big 14 crimes charged in criminal court re: pre-trial detention.

- DCF needs a secure facility to place juveniles that need to be held pre-trial. It’s not a lot of cases, but when these cases arise it’s because something serious has happened and public safety is at risk.

RESPONSE #6:

- The simple answer is this: DCF is not ready for Raise the Age. It can’t manage the current juveniles and youthful offenders on probation.
- For example: ___ weeks ago, I was in court on a probation review for a juvenile. The juvenile had been on probation since January. At a probation review in May, DCF had not yet made the BARJ referral that was required as part of probation. Last month when we returned to court, DCF had made no contact with the juvenile since the prior hearing, nor had it made the BARJ referral. We just decided to discharge probation without completion because the situation was unfair to the juvenile. I want to remind you that the juvenile was in the court process because they returned high-risk on the YASI. They needed the higher level DCF intervention and did not get it. ... This is not the only time this has happened. I recognize that DCF is understaffed, overworked, and constantly triaging their cases, but this does not serve our community.
- In addition, the court does not have the proper resources and laws to compel 18- and 19-year-old delinquents to engage in the process. The only kids of this age that do engage and complete the programs are those who have the resources and natural supports to ensure their compliance (who, if they’d been charged in the criminal system, would most likely have been referred to Diversion.) The kids who really need intervention can just avoid court the entire time it has jurisdiction. Yes, the court can and does issue arrest warrants, however all it does is inconvenience the child when they’re either picked up in the community and brought to court or when they’re located outside court hours and cited to come to court.
- I have a 19-year-old kid right now out on arrest warrant for a VOP (alleging non-engagement, among other things). I am very concerned about the health and safety of this child, who I’ve known for years. Their substance use and family systems are extreme risk factors in their lives and the juvenile justice system has no ability to help them without their consensual, active participation. This child has new very serious criminal charges that may have been avoided had the juvenile system had the appropriate supports in place or had the criminal system been able to intervene on the less serious charges.
- [Concerning the issue of ‘aging out’¹⁰ of jurisdiction], I keep track of my cases and report statistics for [County X]. In 2020, when RTA occurred halfway in the year to 18-year-old juveniles, 0 cases aged out of jurisdiction without case resolution. In 2021, 2 cases aged out of jurisdiction without case resolution. In 2022, 4 cases aged out of jurisdiction without case resolution, 1 with a pending arrest warrant. In 2023, 8 cases aged out of jurisdiction without case resolution, 1 with pending arrest warrant. (I haven’t analyzed 2024 yet.) It will only get worse when we add 19-year-old individuals to the delinquency roster.

¹⁰ A related response noted the following concerning the issue of “aging out”: 22 years hard stop for YO; 20.5 years for 18-year-old delinquents; 19.5 years for 16 & 17 year old delinquents; 18 years hard stop for 10 to 15 year old delinquents. Losing jurisdiction often results in dismissal.

- And, while Youthful Offender status is better than delinquency in terms of resources, I still had 1 case in 2023 age out without VOP/Motion to Revoke resolution because the Youth absconded, and we couldn't return them to court prior to their 22nd birthday. In 2022, 3 cases aged out without case resolution or with a VOP pending. In 2021, 3 cases aged out without case resolution or VOP pending.
- For the 18-year-old delinquents with felony charges, I can file a motion to transfer to the criminal division, however it CAN TAKE A LONG TIME --- AND IT only applies to children who show up. The family division cannot rule on such a motion without jurisdiction over the child, which requires the child to have appeared on the delinquency and been given notice of the motion. The true reality of the law is this: We are holding minor delinquents (individuals who are still in the custody of their parents) to a higher level of accountability than adult delinquents (people who are in their own custody and can vote). Such a result is fundamentally unfair to minors.

RESPONSE #7:

- One of the reasons that the legislature gives for the purpose of RTA is to protect young people in the RTA category from the consequences of a criminal record – but this is already accomplished by the expungement provisions 33 VSA 5119 which allows for expungement of any crime except listed offenses that are committed prior to age 25.
- Another aspect of RTA is that victims in this same age category are not being afforded any additional protections re: depositions or testimony or keeping their names/identities confidential when a case is being prosecuted. This is a statute that only benefits young offenders and does not similarly protect young victims. On the victim/offender divide in this age category I would also point out big differences re: gender in these situations and who is benefiting.