

Re-Envisioning Youth Justice in Vermont

House Human Services and House Judiciary

January 15, 2025

Matthew Bernstein and Lauren Higbee

Office of the Child, Youth, and Family Advocate (OCYFA)



What is the OCYFA?

- We are an independent state office that engages in individual and systemic advocacy on behalf of children, youth, and families served by DCF, with an emphasis on child welfare and juvenile justice.
- We are charged with examining systems as a whole and articulating youth-centered systemic reforms that also benefit government.
- “The Office shall promote reforms necessary to better serve Vermont’s children, youths, and families in a manner that addresses racial and social equity.” 33 VSA § 3202

Committee Ask: “How the Juvenile Justice System Achieves Accountability and Rehabilitation”

- Address the paths/options available (probation, treatment, BARJ, etc.) in the following scenarios:
 - Someone 17 or under charged with a misdemeanor
 - Someone 17 or under charged with a violent felony that is not a big-14 offense
 - An 18-year-old charged with a misdemeanor
 - An 18-year-old charged with a violent felony that is not a big-14 offense

The Ask (Cont.): “How the Juvenile Justice System Achieves Accountability and Rehabilitation”

- What capacity do available rehabilitation programs have? What are their needs?
- What happens if a juvenile is not meeting conditions?
- How are individuals in youthful offender status treated differently than juveniles in delinquency proceedings?
- What data is available for different age groups in delinquency proceedings? What charges? What dispositions? Recidivism rates?
- How many individuals are in youthful offender status? By County?

These Questions Break Down into Categories

1. Charging options.
2. Services and supports.
3. Restrictive settings.
4. Data to assess the above categories.

Charging Options

- Delinquencies – Heard in Family Division, confidential, youth-oriented.
- Big 11+3 – Heard in adult criminal court, no confidentiality, even before evidence presented, ages
 - Separate from Act 201 Raise the Age – not affected by April 1, 2025 implementation of RTA Phase II.
- Youthful Offender – Blended sentencing that allows charges to transfer between adult criminal court and family division juvenile court.
 - Separate from Act 201 Raise the Age – not affected by April 1, 2025 implementation of RTA Phase II.

Charging Options:

The Goal for Low-Level Offenses is Discharge

- “Fortunately, research shows that: (1) nearly all youth will mature and age out of crime if given the opportunity to do so, and (2) that there are times when less formal intervention is better, as the justice system can unintentionally interfere with the natural desistance process.”
 - – “Act 201 Implementation Plan,” November 1, 2019.

Charging Options

- Someone 17 or under charged with a misdemeanor
 - Diversion, supportive services, discharge.
- Someone 17 or under charged with a violent felony that is not a big-14 offense
 - Most of these will be charged as Youthful Offenders.
- An 18-year-old charged with a misdemeanor
 - Diversion, supportive services, discharge.
- An 18-year-old charged with a violent felony that is not a big-14 offense
 - Most of these will be charged as Youthful Offenders.

Services and Supports: We Know What Works

- Community services supports leverage federal money, reduce racial disproportionalities, reduce recidivism, protect disability rights, and save the State of Vermont money.
- BARJ, for example, is a Medicaid service that is reimbursable with federal funds.
- If DCF wants Raise the Age to be successful, it must develop other Medicaid services in addition to BARJ.
- It is DCF's legal obligation to develop and maintain community supports and services in the least restrictive setting under the United States Constitution, especially for children in state custody.

Services and Supports

- Recognize the science:
 - Brain immaturity fuels delinquency.
 - Increased maturity is tied to desistance from delinquency.
 - Early childhood trauma often feeds delinquency in adolescence.
- Consistently use high-quality and individualized assessments, like the CANS, to identify specific and aggregate needs.
- Incorporate positive youth development & restorative justice.
- Stop criminalizing youth behavior of impulsivity, immaturity.
- Give youth supportive opportunities to practice being an adult.

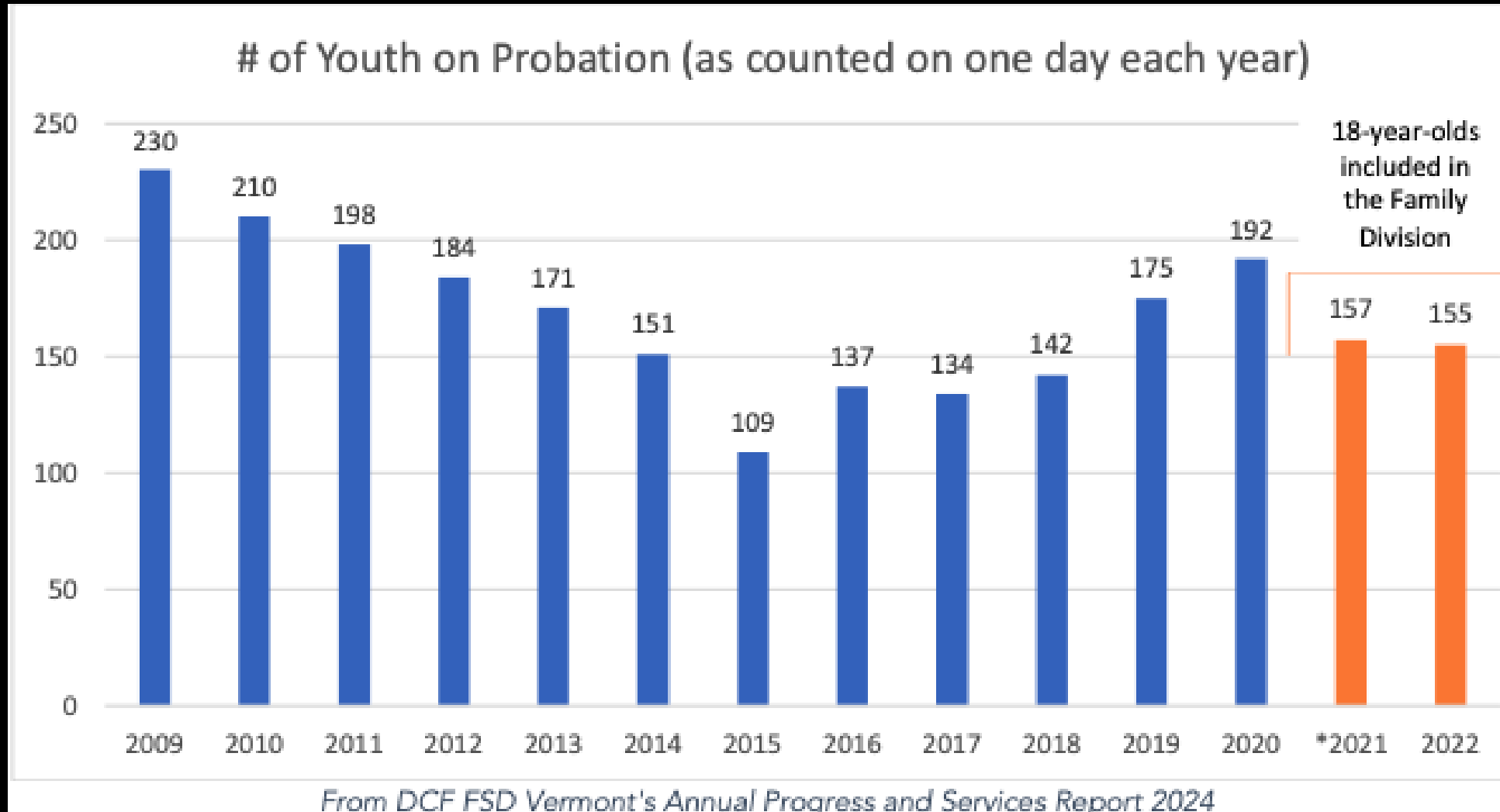
Services and Supports

- Someone 17 or under charged with a misdemeanor
 - Diversion, assess for needs (health, education, vocational), plug into meaningful occupation.
- Someone 17 or under charged with a violent felony that is not a big-14 offense
 - Screen and assess for needs, refer for assessment or evaluation, refer to services, plug into meaningful occupation.
- An 18-year-old charged with a misdemeanor
 - Diversion, assess for needs (health, education, vocational), plug into meaningful occupation.
- An 18-year-old charged with a violent felony that is not a big-14 offense
 - Screen and assess for needs, refer for assessment or evaluation, refer to services, plug into meaningful occupation.

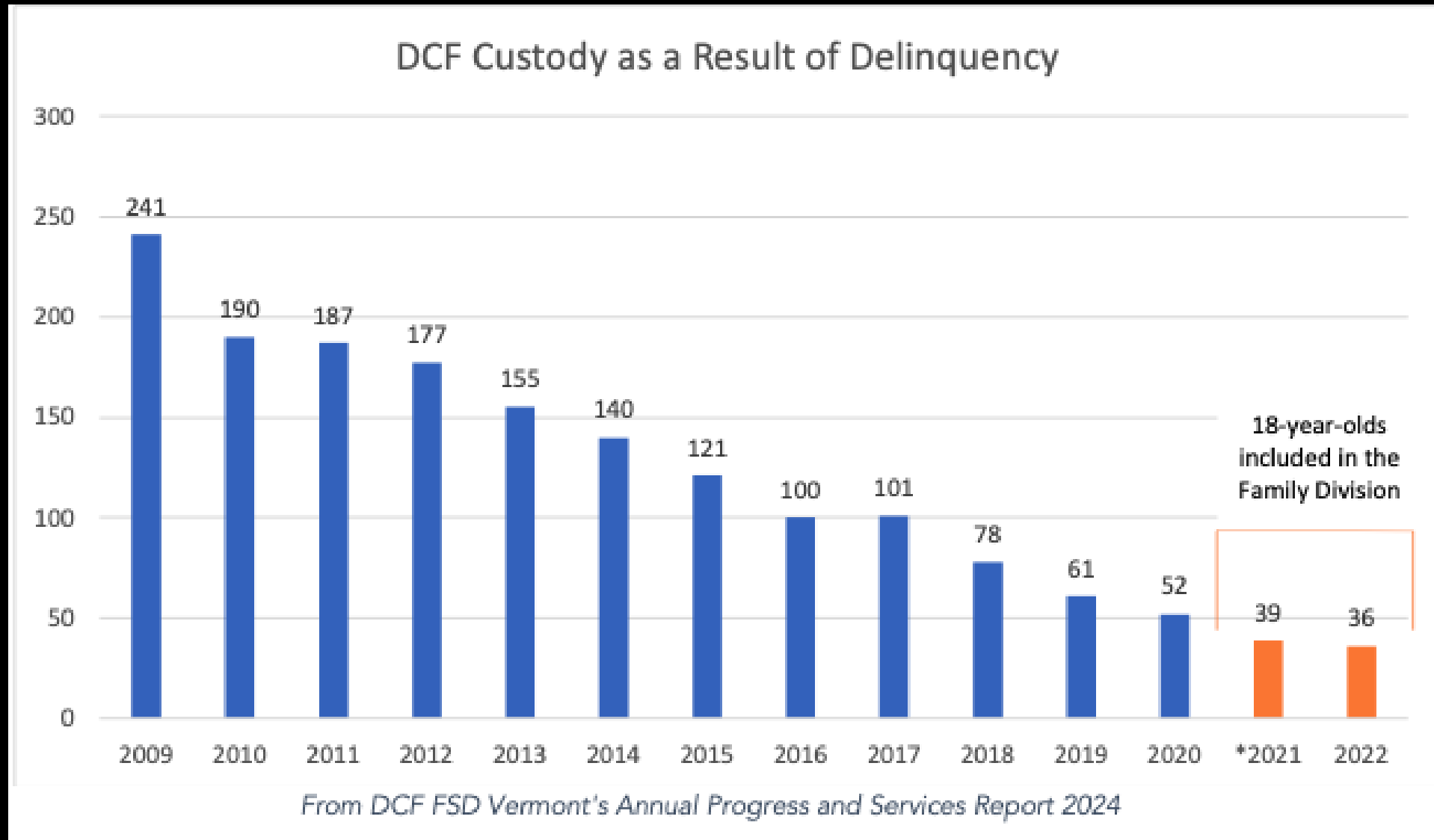
Data

- DCF has not provided any useful data to show that the addition of 18-year-olds under RTA Phase I has been burdensome.
- The data they have provided always includes YO and Big 11+3.
- DCF appears to be proposing a new transfer of caseloads to BARJ but has not presented a clear plan.
- When we isolate the actual RTA youth added to the system since implementation of 18-year-olds, we see no significant burden on DCF.
- In fact, we see a system that is not failing, but successful.

Columbia Justice Lab Data: Needs Updating



Columbia Justice Lab Data: Needs Updating



Delinquency v. YO Filings, All Ages

| Type of Filing | FY23 | Percentage | FY24 | Percentage | FY25 - Partial - 7.1.2024 - 1.8.2025 | Percentage |
|---------------------|------|------------|------|------------|--|------------|
| Total JJ Filings | 1009 | | 974 | | 557 | |
| Delinquencies Total | 694 | 69% | 702 | 72% | 404 | 73% |
| YO Total | 315 | 31% | 272 | 28% | 153 | 27% |

RTA Phase II: We Can Expect About Ten Cases Filed Per Month

“An analysis of the current delinquency caseload in the Family Division and the cases of 18- and 19-year-olds now prosecuted in the adult criminal system indicates that approximately half of these cases can be appropriately diverted, making the overall caseload of delinquency cases manageable when Raise the Age is fully implemented.”

—2019 Act 201
Implementation Report, p. 6.

| Month Case Filed` | Year | Delinquencies 18-year-olds | Misdemeanors, 19-year-olds |
|-------------------|------|----------------------------|----------------------------|
| July | 2022 | 11 | 9 |
| August | 2022 | 15 | 16 |
| September | 2022 | 17 | 13 |
| October | 2022 | 8 | 11 |
| November | 2022 | 18 | 16 |
| December | 2022 | 10 | 11 |
| January | 2023 | 9 | 8 |
| February | 2023 | 16 | 9 |
| March | 2023 | 11 | 8 |
| April | 2023 | 8 | 5 |
| May | 2023 | 9 | 9 |
| June | 2023 | 8 | 12 |
| July | 2023 | 13 | 10 |
| August | 2023 | 4 | 20 |
| September | 2023 | 13 | 8 |
| October | 2023 | 12 | 5 |
| November | 2023 | 7 | 14 |
| December | 2023 | 9 | 4 |
| 18 Month Total | | 198 | 188 |
| Average per month | | 11.0 | 10.4 |

Judiciary data obtained by OCYFA

Summary of Charging Options, Services & Supports, Data

- Raise the Age is already in effect and is successful.
- Raise the Age pertains primarily to low-level offenses handled through diversion, restorative justice, or probation.
- Raise the Age does not significantly burden DCF.
- Raise the Age does not interfere with prosecutorial discretion to charge youth as adults for major crimes under Big 11+3 or YO.
- Raise the Age supports young people, ensures accountability, and minimizes state resources.
- Significant research, policy work, and planning underlies Raise the Age.

Return to First Principles: Why Do We Have a Juvenile Justice System? 33 V.S.A. § 5101a(c)

“High-intensity interventions with low-risk offenders not only decrease program effectiveness, but are contrary to the goal of public safety in that they increase the risk of recidivism. An effective youth justice system includes pre-charge options that keep low-risk offenders out of the criminal justice system altogether.”

Return to First Principles: The State's Obligations to Children

- A politicized approach to juvenile justice overlooks the state's significant constitutional and statutory obligations to children in its custody.
- DCF cannot fail to develop supportive services in juvenile justice and then place children in restrictive settings because that is all that is available.

Experiencing Child Abuse & Neglect Increases the Likelihood of Juvenile Justice Contact

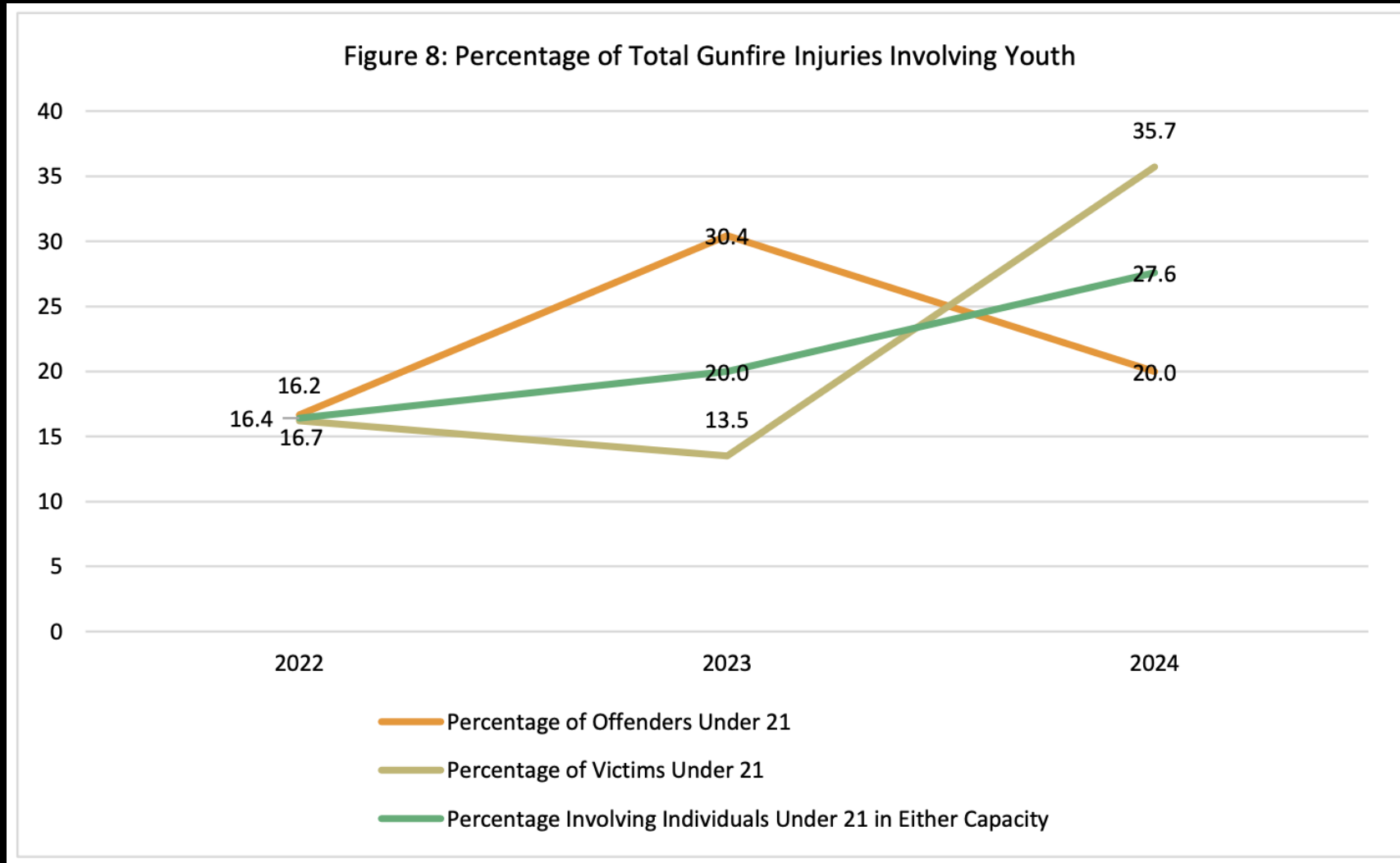
| Age | # of Victims |
|-----|--------------|
| <1 | 44 |
| 1 | 33 |
| 2 | 33 |
| 3 | 41 |
| 4 | 36 |
| 5 | 43 |
| 6 | 31 |
| 7 | 32 |
| 8 | 38 |
| 9 | 22 |
| 10 | 38 |
| 11 | 26 |

| Age | # of Victims |
|--------------|--------------|
| 12 | 29 |
| 13 | 31 |
| 14 | 60 |
| 15 | 60 |
| 16 | 33 |
| 17 | 28 |
| 18 | 2 |
| Total | 660 |

Vermont Victims of Child Maltreatment, 2023, by age, as reported to federal NCANDS system.

- 14- and 15-year-olds represent the highest number of victims of child maltreatment in Vermont.
- More than half of children in foster care nationwide will face arrest, conviction, or detention by the juvenile legal system by the age of 17.
- For children who experience five or more placements in foster homes, juvenile justice involvement increases to 90%.
- 5 out of 7 Red Clover admissions have been 14 or 15 years old as of December 2024.
- 5 out of the 7 Red Clover admission have current or previous CHINS petitions.

Youth Victimization is Rising



Courtesy of Vermont Intelligence Center, VIC

Restrictive Settings

- “We currently spend an estimated \$5 billion per year to incarcerate children. And research shows that locking up kids doesn’t work. This money is better spent on community-based alternatives, which are safer and more effective and offer youth the tools they need to grow into responsible citizens.”

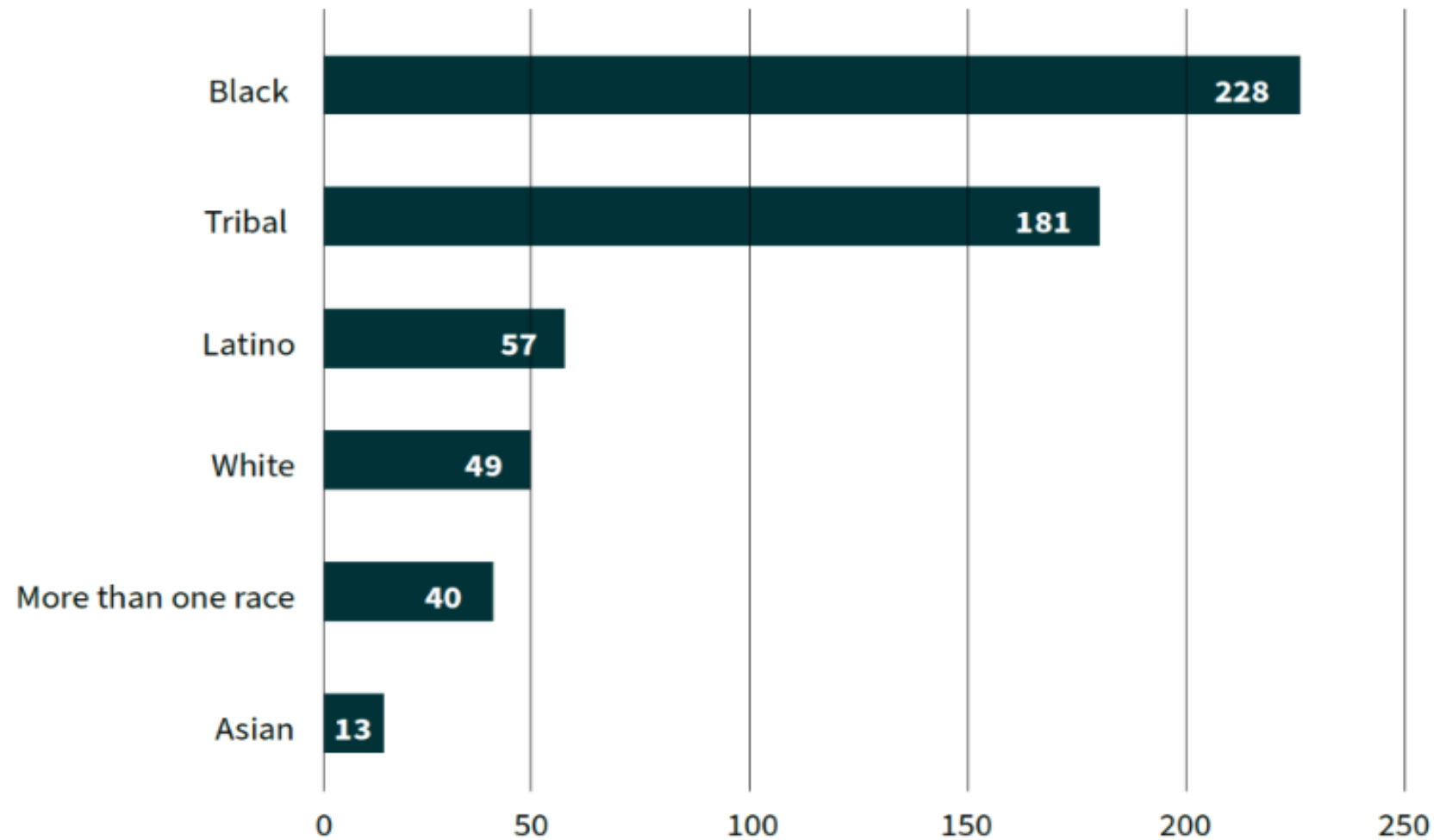
—Liz Ryan, top federal juvenile justice administrator

Restrictive Settings Do Not Keep Communities Safer

- Incarceration does not reduce delinquent behavior.
- Incarceration impedes young people's success in education and employment.
- Incarceration does lasting damage to young people's health and wellbeing.
- Juvenile facilities are rife with maltreatment and abuse.
- Racial and ethnic disparities in incarceration are vast and unjust.

Source: Sentencing Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, 2023.

Youth Incarceration is Racially Dispropor- tionate Nationwide



Source: Puzzanchera, C., Sladky, T.J., & Kang, W. (2023). *Easy Access to the Census of Juveniles in Residential Placement*.

Juvenile Facilities, per 1,000,000 Youth, Nationwide, 2021

Youth Incarceration is Racially Disproportionate In Vermont

VT DOC Numbers: Point in Time, August 2024

- 5 18-year-olds involved with DOC
 - 1 white
 - 3 Black/African-American,
 - 3 'Some Other Race.'
- 9 Incarcerated 19-year-olds
 - 3 white
 - 3 Black/African-American
 - 3 'Some Other Race.'
- 19-year-olds supervised in the community – all white.
- Compare to total adult VT incarcerated population – 82.9% white, 10.6% Black, remaining 6.5% either identify as multi-racial or another race.

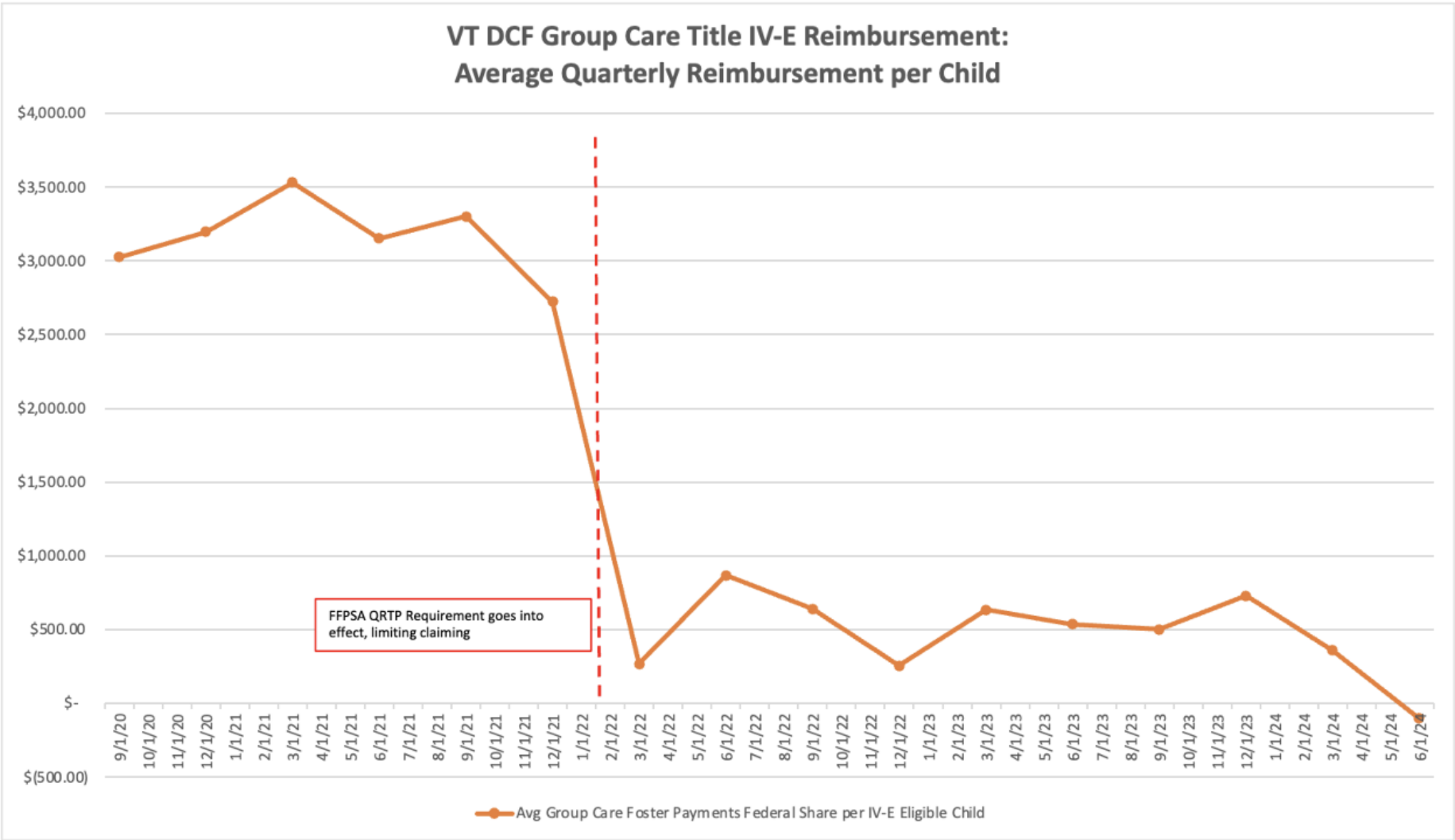
Youth Incarceration is Expensive, Especially in Vermont

- In 2014, Vermont spent an average of \$224,000 a year to lock up *each youth* at Woodside, the sixth highest of any state in the nation.
 - (Justice Policy Institute, 2014).
- In 2020, Vermont spent more than \$528,000 to lock up *each youth*, a 135% increase that took us to fourth in the nation.
 - (Justice Policy Institute, 2020).
- In 2026, when the new prison is proposed to come online, the cost of incarceration for *each youth* in Vermont is likely to approach a million dollars a year.

Deep End Investments Rely on State General Fund Dollars

- How much are we spending on residential care? \$ 10 million+ ?
- How much will we spend on a new youth prison? \$ 50 million+ ?
- Title IV-E funds will not be available to support the proposed Green Mountain Youth Campus under the current plan.
- Medicaid funds will not be available to support the proposed Green Mountain Youth Campus under the current plan.

With Changes in Federal Law, Deep End Investments Become Even More Expensive



Restrictive Settings: Four Beds May be Enough

- Red Clover presents an opportunity to assess whether additional locked facilities are necessary.
- Data analysis of treatment needs, admissions, discharges, daily utilization is required to right size Vermont's locked capacity.
- Best practices encourage building programs, not bricks and mortar facilities.

Insufficient Changes to Woodside Structures

- The Red Clover Treatment Program opened in October 2024, four years after the closure of Woodside.
- There have been minimal systemic changes to ensure the systemic abuses of Woodside do not happen again.
- DCF maintains licensing authority over Red Clover (i.e. as with Woodside, it regulates itself).
- One key difference: DCF directly contracts with a private, for-profit entity to run Red Clover rather than run it itself.

Insufficient Changes to Woodside Structures

- DCF's Residential Treatment Program regulations have not changed since Woodside.
- These regulations exempt locked residential treatment facilities from prohibitions on strip searches and mechanical restraints.
- Red Clover is licensed for 13–18-year-olds. This means that under current regulations a 13-year-old can be stripped searched and mechanically restrained at the facility.
- Red Clover has received positive reviews so far.

Institutionalization is a Disability Rights Issue

- What happens when Vermont / DCF invest in deep end, restrictive facilities, and fail to develop community-based services?

Maine: Department of Justice Olmstead Concerns



U.S. Department of Justice
Civil Rights Division

Disability Rights Section – 4CON
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530

June 22, 2022

By First Class Mail and Electronic Mail

Governor Janet Mills
1 State House Station
Augusta, ME 04333

Attorney General Aaron Frey
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
oag.generalcivil@maine.gov

Re: United States' Investigation of Maine's Behavioral Health System for Children
Under Title II of the Americans with Disabilities Act

Dear Governor Mills and Attorney General Frey:

We write to report the findings of our investigation into Maine's behavioral health system for children.¹ In response to a complaint submitted on behalf of children across the state, we assessed Maine's compliance with Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–12134, as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which requires public entities to administer services to individuals with disabilities in the most integrated setting appropriate to their needs. The U.S. Department of Justice (the Department) is authorized to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. §§ 35.170–174, 190(e).

“We have determined that Maine is violating the ADA by failing to provide behavioral health services to children in the most integrated setting appropriate to their needs. Instead, the State unnecessarily relies on segregated settings such as psychiatric hospitals and residential treatment facilities to provide these services. As a result of these violations, children are separated from their families and communities.”

Department of Justice Sues Maine

2022 DOJ Letter: “Maine could reasonably modify its existing community-based programs, without fundamentally altering its current system, to prevent unnecessary segregation of children with behavioral health needs in facilities. Such modifications would allow children to live and thrive in their own homes and communities instead of entering or remaining in institutions just to access appropriate care.”

PRESS RELEASE

Justice Department Sues Maine for Violating the Americans with Disabilities Act

Monday, September 9, 2024

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For Immediate Release

Office of Public Affairs

The Justice Department [sued](#) the State of Maine today for unnecessarily segregating children with behavioral health disabilities in hospitals, residential facilities and a state-operated juvenile detention facility in violation of the Americans with Disabilities Act (ADA) and the Supreme Court’s decision in *Olmstead v. L.C.* The department previously notified Maine of its findings of civil rights violations in a [June 2022 letter](#) to Maine. The letter identified steps that Maine should take to remedy the violations.

2024 DOJ Lawsuit Against Maine

VT: 2016 Department of Justice Letter to DCF



U.S. Department of Justice
United States Attorney
District of Vermont

United States Courthouse and Federal Building
Post Office Box 570
Burlington, Vermont, 05401-0570

(802) 951-6725
Fax: (802) 951-6540

February 12, 2016

Ken Schatz
Commissioner
Department for Children and Families
HC 1 North, 280 State Drive
Waterbury, VT 05671-1080

Dear Ken,

Thank you for taking the time to meet with us last week. We appreciate the information that you shared, both in advance of and during our meeting about Vermont's juvenile justice system. We also appreciate your willingness to listen to our concerns about the Department for Children and Families ("DCF") policies and practices related to administrative placements at the Woodside facility.

During our conversation, you indicated that you are interested in identifying alternatives to placement in secure settings and in group placements whenever possible. We wholeheartedly support that approach. And we have particular concern about placement in a secure facility for children who have not been charged with a new crime or probation violation. Our concern is heightened further because those children who are placed at Woodside can be detained there for significant periods of time even when DCF staff agrees that a less secure setting would be appropriate if one were available. As we explained, we recommend seeking technical assistance to identify alternative strategies to prevent these placements and ultimately, revising policy to prohibit these placements. To the extent that children are placed at Woodside administratively, areas for potential reform include the length of time before an initial hearing, the risk assessment tool that is administered, the type of evidence that is presented, and the opportunity to confront witnesses who testify.

"Our concern is heightened further because those children who are placed at Woodside can be detained there for significant periods of time even when DCF staff agrees that a less secure setting would be appropriate if one were available. As we explained, we recommend seeking technical assistance to identify alternative strategies to prevent these placements and ultimately, revising policy to prohibit these placements. To the extent that children are placed at Woodside administratively, areas for potential reform include the length of time before an initial hearing, the risk assessment tool that is administered, the type of evidence that is presented, and the opportunity to confront witnesses who testify."

Conclusion

- The debate over Raise the Age has become a debate over the juvenile justice system as a whole.
- Incarceration can retraumatize youth and make them less likely to succeed.
- Community alternatives to confinement achieve equal or better outcomes at far lower cost.
- To our knowledge, not a single youth charged under Act 201, the actual Raise the Age statute, has been incarcerated in any locked facility. Upon information and belief, youth incarcerated are entirely charged under Big 11+3 or as Youthful Offenders.

Conclusion

- Raise the Age is already in effect and is successful.
- Raise the Age pertains primarily to low-level offenses handled through diversion, restorative justice, or probation.
- Raise the Age does not significantly increase DCF caseloads.
- Raise the Age requires DCF to develop supportive programs.
- Raise the Age does not interfere with prosecutorial discretion to charge youth as adults for major crimes.
- Raise the Age does not require significant additional capacity in adult or juvenile facilities.
- Raise the Age supports young people, ensures accountability, and minimizes state resources.

Thank you!

- Questions?
- Please don't hesitate to reach out:
 - childadvocate.vermont.gov
 - Matthew.Bernstein@vermont.gov
 - Lauren.Higbee@vermont.gov
- Referral information for the public:
 - 802-828-2828 (leave a message)
 - OCYFA@vermont.gov (shared mailbox)
 - Text to 802-312-1010

Sources

- ACF, [Child Maltreatment 2023](#), 2025.
- ADA, [Olmstead Summary](#)
- Columbia Justice Lab, [Update on the Implementation of Vermont's "Raise the Age" Law](#), 2024
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- DCF, [Woodside Juvenile Rehabilitation Center Report](#), 2019.
- Department of Justice, [Olmstead Letter to Maine](#), 2022.
- Office of Juvenile Justice and Delinquency Prevention [Literature Review: Intersection of Juvenile Justice and Child Welfare Systems | Office of Juvenile Justice and Delinquency Prevention](#)
- Justice Policy Institute, [Sticker Shock: Calculating the Full Price Tag for Youth Incarceration](#), 2014
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- Romero Davis, [What the juvenile justice system can learn from child welfare reforms](#), 2024.
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- Sentencing Project, [Why Youth Incarceration Fails: An Updated Review of the Evidence](#), 2023.