Report to
The Vermont Legislature

Report on
Act 201 Implementation Plan Report & Recommendations

In Accordance with [2018 Act 201 Sec. 12(3)]

Submitted to: Joint Legislative Justice Oversight Committee
Joint Legislative Child Protection Oversight Committee

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Executive Summary

Vermont has been conscientiously preparing for the historic moment when it will become the first state in the country to raise its upper age of juvenile jurisdiction past a youth's 18th birthday. Starting July 1, 2020, most young people accused of breaking the law at age 18 (excluding the more serious "Big 12" offenses) will be prosecuted in the Family Division of the Superior Court (rather than the adult Criminal Division), with supervision and coordination of services provided by the Department for Children and Families (DCF), rather than the Department of Corrections. Starting in July 1, 2022, most youth accused of breaking the law at age 19 will be similarly included in the juvenile justice system, making the 20th birthday the upper age of juvenile jurisdiction in the state.

Vermont's planning process for the implementation of Act 201 (the "Raise the Age" law (RTA)) has been inclusive, thorough, and thoughtful. Among other activities, DCF issued a Request for Proposal from independent entities with expertise in this field to work with DCF and the other stakeholders to develop an "Operations Plan" to raise the age. After a competitive process, Vermont entered into a contract with Columbia University's Justice Lab. DCF also contracted with the Honorable Amy Davenport (Ret.) to collect recent years' court data to forecast caseloads following Raise the Age implementation. Karen Vastine, Senior Advisor to the Commissioner of the Department for Children and Families, facilitated regular meetings of the Juvenile Justice Stakeholders Group, which includes representatives from key stakeholders in Vermont's justice system (see Appendix B for membership list), to review research findings and recommendations proposed by the Justice Lab. The Juvenile Justice Stakeholder Group discussed and support the broad system recommendations outlined in this report. DCF also arranged for a number of focused meetings with specific stakeholders, including victims' rights advocates, Deputy State's Attorneys, law enforcement agency chiefs, and state police, for in-depth discussions. Finally, DCF, in collaboration with the Children and Family Council for Prevention Programs, hosted a full-day conference on emerging adult justice with the Center for Justice Reform at Vermont Law School, and sought feedback from the 150 attendees from around the state to gather their perspectives, expertise, and recommendations to further inform this report (the Report).

Research in adolescent brain science, developmental psychology, and sociology demonstrates that emerging adulthood, between the ages of 18 and 25, is a distinct developmental stage that is critically important to the transition into mature, independent, and productive adulthood. This research indicates that, to some degree, risky and even illegal conduct is normative for adolescents and emerging adults. This developmental period is marked by malleability, which makes this cohort more effectively served by the juvenile justice system's rehabilitative approach than by the adult system's more punitive approach. 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.

Until recently, the adult criminal system paid scant attention to this age group, automatically treating them like 40- or 50-year-olds, and failing to provide effective and developmentally appropriate responses, programs, and opportunities. The failure of this approach is evident: emerging adults are over-represented in the justice system, have the highest recidivism rates, and

also experience the largest racial disparities of any age group. By incorporating those accused of breaking the law as 18- and 19-year-olds into the juvenile justice system, Vermont has created an opportunity to simultaneously improve outcomes for all youth, increase public safety, and reduce costs.

Data on filings in Vermont's adult criminal system show that non-Big 12 cases of 18- and 19-year-olds in many ways resemble those of youth under age 18 who are prosecuted in the Family Division of the Superior Court (the Family Division). The vast majority are charged with minor (most commonly public order) offenses and a significant percentage of cases are diverted or dismissed. Of the cases of 18- and 19-year-olds that end in a conviction, almost half result in a fine only. In Fiscal Year 2019 (the most recent data available), there were a total of 271 case filings for 18-year-olds charged with non-Big 12 offenses in the adult Criminal Division and 286 case filings for 19-year-olds; 85% of these filings were for misdemeanor offenses.[1]

To ensure the smooth implementation of Act 201 and the inclusion of 18- and 19-year-olds into Vermont's juvenile justice system, the Report and its recommendations focus on the following key strategies:

1) Increasing opportunities to divert cases from formal justice processing

Focusing and expanding Vermont's capacity to handle lower-level cases outside of formal court proceedings (by increasing the use of practices such as police diversion, school-based interventions, restorative justice processes at Community Justice Centers, Balanced and Restorative Justice (BARJ), and Court Diversion programs) will be key to the successful implementation of the Raise the Age law. Diversion from the formal justice process appropriately and effectively holds youth accountable, reduces recidivism, and focuses Family Division and juvenile justice resources on more serious cases that cannot be appropriately served outside of the formal court process. 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.

The Report offers a number of recommendations regarding ways to effectively divert cases involving youth of all ages (including 18- and 19-year-olds when the Raise the Age law is fully implemented) from the juvenile justice system that: (1) ensure statewide consistency in the provision of opportunities to divert cases and the quality of diversion programs; (2) significantly increase the number of cases diverted (without "net-widening"[2]), with a focus on diverting cases as early as possible; (3) expand diversion programs targeted at specific needs or populations; and (4) address barriers to youth entering and successfully completing diversion.

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[1] Judge A. Davenport. (2019, pp. 1-2). Memorandum to Karen Vastine, "RE: Fiscal Year 2019 Data on Criminal Charges Involving 18- and 19-Year-Olds." [Memorandum]. Retrieved from the Vermont Department of Children and Families.

[2] The effort to expand diversion must ensure that it is used only for youth who would have otherwise penetrated deeper, and not to draw in youth who would otherwise have not come into contact with the justice system. This tendency to over-include, which often results from efforts to expand diversion, was originally referred to as "net widening" by Stanley Cohen in 1979. See Cohen S (1979) The punitive city: Notes on the dispersal of social control. Crime, *Law and Social Change 3*(4): 339–363.

2) Maximizing the efficiency of the court process

Juvenile justice system stakeholders, including those from traditionally opposing perspectives, agree that streamlining the delinquency court process for all youth (including those accused of lawbreaking as 18- and 19-year-olds who will be included following Act 201 implementation) would greatly enhance the state's implementation of the Raise the Age law. Recommendations in the Report include: (1) creating formal opportunities for prosecution and defense to confer over possible resolution of cases early in the court process; (2) clarifying and defining the role of DCF in cases where DCF does not have custody, so that Family Services Workers use their time and resources most productively; and (3) ensuring that a diversion liaison is present at arraignments and case conferences to facilitate appropriate diversions in the most timely manner.

3) Ensuring a full continuum of post-dispositional options

It will be more important than ever for the juvenile justice system to have a full continuum of post-dispositional options once 18- and 19-year-olds are included in the juvenile justice system. These options should be applied with a Positive Youth Development/Justice framework (see Appendix C) and should proportionately respond to the lawbreaking behavior.

Recommendations in the Report include: (1) the creation of immediate, tailored, and developmentally appropriate responses for youth who have been adjudicated outside of formal probation; (2) the use of appropriate alternatives to fines, which are not used in the Family Division (and are inconsistent with the Family Division's rehabilitative model) but have been a common disposition for 18- and 19-year-olds convicted of low-level offenses in the Criminal Division; (3) training and support for DCF Family Services Workers to ensure best practices for community supervision and probation, including the adoption of an incentive-based model; (4) the transition to a full continuum of care for residential treatment/out-of-home placements for *all* youth in the delinquency system (including those in custody for alleged lawbreaking as 18- and 19-year-olds when the Raise the Age law is fully implemented). Vermont law does not allow the Department of Corrections to incarcerate youth adjudicated in the juvenile justice system in its adult facilities.

The Report also offers recommendations regarding several additional issues that various stakeholders repeatedly identified as important during the planning process:

A. Victims' Rights

Assisting victims and providing them with support, information, consultation, and notification should not depend on the Division – Family or Criminal – in which the case is handled. Although the laws affording victims rights are robust, Vermont must ensure that practices are consistent across the state and offered throughout the course of each case. The Report offers a number of recommendations, including ways to improve communication between advocates at States Attorney's offices and DCF, as well as ensuring that DCF has the capacity to provide ongoing information and referrals for much needed support to victims during the post-dispositional period.

B. DCF Operational Plan

DCF provides a wide array of critical services, including protection in cases of child abuse and neglect. Delinquency and youthful offender (YO) cases are a small but important part of DCF's

overall caseload. During this planning period, DCF has considered the best operational structure to serve delinquent and YO youth both before and after its caseload expands to include emerging adults. The Report outlines the proposed operational plan which deploys DCF Family Services Workers and the Department's resources to best address youths' strengths and needs and public safety. Based on the premise that there is great value in applying social work principles to rehabilitative responses, and in the Positive Youth Justice (see Appendix C) approach, it is recommended that juvenile delinquency remain within the Family Services Division of DCF, with additional structures to facilitate the specialization needed to best address the 18- and 19-year-old caseload that will soon be added.

C. Resources

The Raise the Age law will move a population of youth from the adult criminal system to the juvenile justice system to better serve youth and to improve public safety. Although 18- and 19-year-olds are currently being prosecuted in the adult system, moving to the juvenile justice system will be more resource intensive, since the juvenile system generally provides more supervision and oversight than the adult justice system. Any increase in investment in youth in the juvenile system can provide longer and greater cost savings in the future, since it provides youth age-appropriate resources at a critical developmental stage and reduces collateral consequences, thereby enhancing opportunities for youth to grow into responsible and productive citizens.

The Report discusses the resources that currently exist to serve emerging adults in the juvenile justice system and suggests targeted investments in programs, such as BARJ, that will divert more cases from the formal process, thereby keeping the juvenile caseloads at manageable and appropriate levels.

D. Ongoing data collection/analysis

The Raise the Age law will be implemented in two stages, with 18-year-olds incorporated into the juvenile system starting on July 1, 2020, and 19-year-olds on July 1, 2022. Monitoring the implementation of the first phase will provide Vermont valuable information that will greatly assist with the second phase. The Report identifies the most important data to monitor at each key stage of the justice system and recommends that Vermont: (1) create and/or maintain data systems for ongoing data analysis and planning; (2) designate an agency or entity to collect and aggregate data from different stakeholders and present it in a user-friendly manner; and (3) designate an agency or a group of the key juvenile justice stakeholders to monitor implementation of the Raise the Age law so any challenges can be addressed in a timely fashion.

Finally, the Report recommends several statutory changes that: (1) set the extended age of involvement in DCF supervision and custody to include emerging adults; (2) provide clarity about the type of custody (physical) that DCF has if the judge orders a delinquent youth over 18 to its custody; (3) ensure that Tamarack[3] continues to be available to 18- and 19-year-olds when

[3] The Tamarack program is for adults charged with a crime who have a substance use or mental health treatment need, regardless of their criminal history. Prosecutors may refer youth to this program before or after arraignment. Tamarack is a voluntary program, and participants must be willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm. Program staff quickly connect participants to substance use, mental health, and other community-based services. Service needs related to the charge are addressed in a

they are in the Family Division; (4) makes technical corrections to ensure that all references to 18-year-olds are modified to comport with Act 201; and (5) clarifies to which court law enforcement should cite youth.

Although all justice stakeholders will be responsible for working to implement Act 201, the responsibility of the Department for Children and Families and the Family Division of the Superior Court will increase the most. Police, prosecutors, and defenders already work on cases involving those accused of lawbreaking as 18- and 19- years-olds in the adult justice system. The Family Division and DCF will serve this group for the first time and will expand their caseloads, while adult justice system caseloads experience a near-corresponding decrease. Consequently, it is imperative that these agencies receive the support needed to simultaneously serve emerging adults and the younger youth in their care.

restorative agreement. Participants are expected to complete the program within three to four months. Service needs unrelated to the charge are offered but not included in a restorative agreement. While not legally required, a successful completion of the Tamarack program can result in the imposition of a lesser sentence, or even withdrawal or dismissal of the underlying charges.

Part I: Introduction

Vermont has been conscientiously preparing for the historic moment when it will become the first state in the country to raise its upper age of juvenile jurisdiction over the 18th birthday. Starting on July 1, 2020, most young people accused of breaking the law at the age of 18 (excluding the more serious "Big 12" offenses) will be prosecuted in the Family Division of the Superior Court (rather than the adult Criminal Division), with supervision and coordination of services provided by the Department for Children and Families (DCF) rather than the Department of Corrections (DOC). Starting on July 1, 2022, most youth accused of breaking the law at the age of 19 will similarly be included in the juvenile justice system, making the 20th birthday the upper age of juvenile jurisdiction in the state.[4]

Vermont's planning process for the implementation of Act 201 (the "Raise the Age" law (RTA)) has been inclusive, thorough and thoughtful.[5] The following list shares some of the highlights of the activities undertaken:

- DCF issued a Request for Proposal from independent entities with expertise in this field to work with DCF and the other stakeholders to develop an "Operations Plan" to raise the age. After a competitive process, Vermont entered into a one-year contract with Columbia University's Justice Lab.
- The Justice Lab conducted an Action Research Project, which has involved collecting data, drawing on the expertise of interested stakeholders, sharing research in the field and best practices, providing guidance, support, and information as needed. The Justice Lab helped the stakeholders identify the most important issues, researched and analyzed these issues, and submitted memoranda to DCF with findings and draft recommendations. The Justice Lab partnered with DCF to present the recommendations to members of the Juvenile Justice Stakeholders Group (see Appendix B) and other interested and relevant parties to solicit feedback. The Justice Lab has also worked with DCF in drafting this report.
- DCF contracted with the Honorable Amy Davenport (Ret.) to collect recent years' Family Division and Criminal Division court data, to forecast caseloads following Raise the Age implementation.
- DCF arranged for a number of meetings with specific stakeholders, including: victims' advocates, state police, Chairs of the House and Senate Judiciary Committees, the Attorney General, State's Attorneys (and Deputies), Chief Juvenile Defender, Governor's Legal Counsel and Director of Policy, Secretary of the Agency of Human Services, staff and youth at Woodside, Chief Superior Court Judge and judiciary staff, the Department of Corrections, and DCF (Commissioner and Deputy Commissioners, central office

[4] The new law provides the same justice-system responses to 18-year-old lawbreaking as is currently applied to 17-year-olds. For example, if a youth is charged with a non-Big 12 "listed offense," the court could transfer the youth from the Family Division to the adult Criminal Division for prosecution.

[5] DCF and the Justice Lab are deeply grateful to *everyone* who graciously and generously provided information and input during this planning process. We want to extend special thanks to the following people who devoted an extra amount of time and energy to assist with this report: The Hon. Amy Davenport (Ret.), The Hon. Brian Grearson, Marshall Pahl, Erica Marthage, James Pepper, John Campbell, Dawn Sanborn, Tari Scott, Jaye Johnson, Kendal Smith, Meghan Place, Jessica Barquist, Sarah Robinson, David Scherr, Amy Farr, Willa Farrell, Rachel Jolly, Kelly Ahrens, Dale Crook, Cullen Bullard, Laura Zeliger, Jessica Dorr, and Gary Marvel.

leadership policy and operations staff, legal counsel, DCF district directors, supervisors, and Family Services Workers).

- Karen Vastine, Senior Advisor to the Commissioner of the Department for Children and Families, facilitated regular meetings of the Juvenile Justice Stakeholders Group, which includes representatives from key stakeholders in Vermont's juvenile justice system, to review research findings and recommendations proposed by the Justice Lab. The recommendations presented in this report were shared, discussed, and supported by the Stakeholders Group.
- DCF's Juvenile Justice Lead Investigator conducted meetings of community and state-based practitioners in each of the districts to analyze available resources, strengths, and gaps. Bennington County State's Attorney Erica Marthage (a member of the Stakeholders Group), took part in many of these meetings.
- DCF and the Justice Lab co-presented information about the planning for Raise the Age in Vermont at three national conferences that further informed the planning process: The 2019 Conference of the National Council on Family and Juvenile Court Judges (March 2019), the Justice Lab's Summit "Emerging Adults & Justice Reform: International perspectives on research and practice" (June 2019), and The Coalition for Juvenile Justice's 2019 Annual Conference, "Bridging the Gap: Improving Outcomes for all Youth" (June 2019).
- The Justice Lab hosted a two-day convening of a small group of juvenile correctional leaders from around the country, which included the Commissioner of Vermont's DCF, to: learn from each other and discuss challenges; visit a New York City "Close to Home" facility for youth as well as a neighborhood probation office (called a Neighborhood Opportunity Network or NeON); and to hear a presentation from a researcher from The Netherlands about a new residential treatment model in Amsterdam that serves youth up to age 23.
- The Justice Lab arranged a site visit for DCF Legal Counsel and the Senior Advisor to the Commissioner to meet with the Commissioner of the Massachusetts Department of Youth Services and his leadership staff to learn about the practices and policies they have in place to serve emerging adults. The site visit included tours of two staff-secure, residential treatment facilities and discussions with the staff and youths at the facilities. The tour also included a visit to a UTEC program, a non-profit community organization located in Lowell, Massachusetts that is nationally recognized for its work serving young people ages 17-25 who are returning home from incarceration or have other histories of serious criminal and/or gang involvement.
- Finally, DCF, in collaboration with the Children and Family Council for Prevention Programs, hosted a full-day conference on emerging adult justice with the Center for Justice Reform at Vermont Law School. DCF sought feedback from the 150 attendees from around the state to gather their perspectives, expertise, and recommendations to further inform this Report. Vincent Schiraldi and Lael Chester from the Justice Lab presented at the conference.

Act 201 represents a culmination of reforms to Vermont's juvenile justice system. Since the 2016 legislative session, Vermont has enacted statutory reforms critical to removing older adolescents and emerging adults from the adult criminal system, including:

- Requiring all 16- and 17-year-olds who are charged with a non-Big 12 Offense to be processed in the Family Division;
- Extending 'Youthful Offender' status to 18-21-year-olds;[6]
- Creating robust opportunities for informal and formal diversion; and
- Strengthening the use of screening tools to inform diversion, charging, and filing decisions.[7]

As is evident in this report, statutory reform plays an important role in advancing change. Perhaps equally important are the changes that come about through implementation, practice, policy, and cultural shifts. Before 2016, the joint leadership of DCF, Vermont's federally required State Advisory Group (named The Children and Family Council for Prevention Programs) and community advocates, accomplished a number of critical reforms: In 2007, DCF shifted its supervision practice to Risk-Need-Responsivity and adopted the use of screening and assessment tools to guide services, support, and supervision; the State Advisory Group (SAG) funded a number of initiatives to expand and strengthen the scope of diversion programs including the addition of a statewide program that addresses youth substance use; the state incorporated screening and assessment tools to direct diversion program case management interventions; and there was a concerted effort to strengthen the use of restorative justice in community-based programs. Moreover, the SAG funded a family court recidivism study and a state's attorney to work with his fellow elected colleagues to encourage filing charges for under-age youth in the Family Division. The sum total of these efforts meant that when implementation of significant legislative reforms began in 2016, the system was already poised and conversant in developmentally appropriate responses to adolescents who engage in illegal behavior.

The focus in the United States on older adolescents and emerging adults is relatively recent and flows from research in neurobiology, developmental psychology and sociology that demonstrates that emerging adulthood (between the ages of 18 and 25) is a distinct developmental stage that is critically important to the transition into mature, independent, and productive adulthood.[8] This research indicates that there is no magic birthday that transforms an adolescent into an adult. The human brain continues to develop well beyond the 18th birthday and normally into the mid-20s. Further, this generation is taking longer to reach the key milestones associated with adulthood (e.g., living independently, getting married, and getting a job) for a number of reasons. These milestones are critical for the young person's development (for example, it is difficult to take on

[6] An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court, No. 153 § 2 (2016) (codified as 33 V.S.A. § 5281 (2018)).

[7] An act relating to adjudicating all teenagers in the Family Division except those charged with a serious violent felony, No. 201 § 6 (codified as 33 V.S.A. § 5525(b)-(c)) (providing the opportunity for every child to undergo a "risk and needs screening" prior to their preliminary hearing, which can then inform diversion decisions based on that youth's risk level).

[8] The term "emerging adult" was first coined in 2000 by psychologist Jeffrey Arnett and defines the transition from a youth who is dependent on parents or guardians for supervision, guidance, and emotional and financial support, into a fully mature, independent adult who engages as a productive and healthy member of society. For more information, see Arnett, J. J. (2004). *Emerging adulthood: the winding road from the late teens through the twenties.* New York, NY: Oxford University Press. Other terms sometimes used to describe this population are "young adults" or "transition-age youth."

an adult role in society without safe and stable housing), and they have been found to be important milestones to maturing out of criminal behavior.[9]

Research shows that like their younger peers, emerging adults are overly motivated by reward-seeking behavior, susceptible to peer influence, and prone to risk-taking and impulsive behavior.[10] This age group is also particularly volatile in emotionally charged settings, especially when with peers, and both brain damage and a history of trauma have been shown to amplify and/or prolong the effects of such factors.[11] To some degree, risky and even illegal conduct is normative for adolescents and emerging adults.[12]

However, research shows: (1) nearly all youth will mature and age out of crime if given the opportunity to do so,[13] and (2) that there are times when less formal intervention is better, as the justice system can unintentionally interfere with the natural desistance process.[14] Emerging adults are malleable, making them responsive to the juvenile justice system's focus on rehabilitation and the developmentally appropriate interventions that promote growth. Malleability also makes these older adolescents more susceptible to negative interventions, such as the more punitive aspects of the adult criminal justice system.

Until recently, as has been documented in national studies, the adult criminal system did not focus attention on this age group and its unique attributes; instead it automatically treated them like 40- or 50-year-olds, and failed to provide effective and developmentally appropriate

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[9] Laub, J., & Sampson, R. (2001). Understanding Desistance from Crime. *Crime and Justice, 28*, 1-69. Retrieved from http://www.jstor.org/stable/1147672; Schiraldi, V., Western, B., & Bradner, K. (2015, pp. 4-6). *Community-Based Responses to Justice-Involved Young Adults* (New Thinking in Community Corrections Bulletin). Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/248900.pdf; Also see below on normative lawbreaking during adolescence.

[10] Schiraldi, V., Western, B., & Bradner, K. (2015, pp. 3-4). *Community-Based Responses to Justice-Involved Young Adults* (New Thinking in Community Corrections Bulletin). Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/248900.pdf.

[11] Chein, J. Albert, D., O'Brien, L., Uckert, K., & Steinberg, L. (2011). Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry. *Developmental Science 14*(2). Oxford, UK: Blackwell Publishing, Ltd. doi: 10.1111/j.1467-7687.2010.01035.x; Livingstone, I., Amad, Suleman, A., & Clark, L. (2015, pp. 11-12). *Effective Approaches with Young Adults: A Guide for Probation Services.* London, UK: Clinks. Retrieved from https://www.t2a.org.uk/wp-content/uploads/2015/09/Probation-guide_Ver4_sml.pdf.

[12] National Research Council. (2013, p. 29). *Reforming Juvenile Justice: A Developmental Approach.* Bonnie, R. J., Johnson, R. L., Chemers, B. M., & Schuck, J.A. (Eds.). Washington, DC: The National Academies Press. ("Based on self-reported delinquency studies, virtually everyone commits at least some delinquent acts during adolescence, and most report committing several (Short and Nye, 1958; Elliott, Huizinga, and Ageton, 1985; Huizinga et al., 1993). From this perspective, delinquent behavior could be considered "age-normative"—a part of the normal developmental process of moving through the teenage years.").

[13] National Research Council. (2013, p. 20). *Reforming Juvenile Justice: A Developmental Approach.* Bonnie, R. J., Johnson, R. L., Chemers, B. M., & Schuck, J. A. (Eds.). Washington, DC: The National Academies Press. ("Most young people involved with the juvenile justice system will desist from criminal behavior simply as a result of maturation, although the timing and trajectories of desistance vary considerably (Laub and Sampson, 2001).").

[14] See, for example Fine, A., Donley, S., Cavanagh, C., Miltimore, S., Steinberg, L., Frick, P. J., & Cauffman, E. (2017, p. 111). And Justice for All: Determinants and Effects of Probation Officers' Processing Decisions Regarding First-Time Juvenile Offenders. *Psychology, Public Policy, and Law, 23*(1), 105–117. doi: 10.1037/law0000113 (Finding that "youth who are given the most formal disposition (referral to the District Attorney) are more likely to be rearrested in the subsequent 6 months compared to those youth given less formal dispositions (diversion, sanctioned dismissal.)").

responses, programs, and opportunities. The failure of this long-standing approach is evident: emerging adults are over-represented in the justice system, have the highest recidivism rates, and also experience the largest racial disparities throughout the justice system of any age group.[15]

Policy discussions around the country are now focusing on reforming the justice system so that it recognizes the distinct developmental needs of emerging adults. A National Institute of Justice study group,[16] and a paper from a Harvard Kennedy School Executive Session, recommended that jurisdictions consider incorporating emerging adults into their juvenile justice systems.[17] In 2018, Vermont was one of four states that considered legislation to include emerging adults in the juvenile justice system by raising the age of juvenile jurisdiction beyond the 18th birthday. Although bills have not yet passed in the three other states (Connecticut, Illinois, and Massachusetts),[18] proposals are still being considered and several other states have begun to examine whether to expand their juvenile jurisdiction (e.g., Colorado and Washington).[19]

In the process of planning for Vermont's expansion of its juvenile justice system, the state has taken the opportunity to assess the whole youth justice system, its strengths and challenges. As will be shown below, the recommendations in this report reflect this careful and thorough analysis conducted by the stakeholders.

By incorporating those accused of breaking the law as 18- and 19-year-olds into the juvenile justice system, **Vermont has seized the opportunity to simultaneously improve outcomes for all youth, increase public safety, and reduce costs**.

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[15] Perker, S. S., Chester, L. E., & Schiraldi, V. (2019). *Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach.* New York, NY: Columbia Justice Lab, Emerging Adult Justice. Retrieved from https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Illinois%20Report%20Final.pdf; Schiraldi, V., Western, B., & Bradner, K. (2015). *Community-Based Responses to Justice-Involved Young Adults* (New Thinking in Community Corrections Bulletin). Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/248900.pdf; Pirius, R. (2019). *The Legislative Primer Series on Front-End Justice: Young Adults in the Justice System.* Washington, D.C.: National Conference of State Legislatures. Retrieved from http://www.ncsl.org/Portals/1/Documents/cj/front_end_young-adults_v04_web.pdf.

[16] Loeber, R., Farrington, D. P., & Petechuk, D. (2013, pp. 20-21). *Bulletin 1: From Juvenile Delinquency to Young Adult Offering* (Study Group on the Transitions between Juvenile Delinquency and Adult Crime). Retrieved from https://www.ncjrs.gov/pdffiles1/nij/grants/242931.pdf.

[17] Schiraldi, V., Western, B., & Bradner, K. (2015). *Community-Based Responses to Justice-Involved Young Adults* (New Thinking in Community Corrections Bulletin). Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900. Retrieved from https://www.ncjrs.gov/pdffiles1/nij/248900.pdf.

[18] H.B. 5040, Feb. Sess. 2018 (Conn. 2018); H.B. 4581, 100th Gen. Assem. (Ill. 2018); S. 285, 191th Gen. Ct. (Mass. 2019).

[19] H.B. 19-1149, Reg. Sess. 2019 (Colo. 2019); Colorado Commission on Criminal and Juvenile Justice. (n.d.). Age of Delinquency Task Force. Retrieved from https://www.colorado.gov/pacific/ccjj/ccjj-cADTF.; Washington State's House of Representatives has held multiple hearings to review research on emerging adults and consider policy options. See e.g., Briefing on Responses to Emerging Adults in the Criminal Justice System and Evaluation of Parenting Sentencing Alternatives. Hearing Before H. Comm. on Pub. Safety., 2017 Reg. Sess. (Wash. 2017); Examining the Research on and Innovative Approaches to Young Adults in the Criminal Justice System. Hearing Before H. Comm. on Pub. Safety., 2018 Reg. Sess. (Wash. 2018).

Part II: Impact of Raise the Age in Vermont

Section Takeaways

- **Caseloads for juveniles and 18- and 19-year-olds are decreasing.**
- **Most system-involved youth access off-ramps by having their cases diverted or dismissed prior to conviction or adjudication.**
- **The vast majority of youth offending involves misdemeanors.**
- **A large portion of youth who reach the dispositional phase could be appropriately and effectively served with alternative disposition options (other than formal probation, custody or treatment).**

The planning process for implementation of Act 201 included analysis of caseload data, specifically on delinquencies and on 18- and 19-year-olds in the Criminal Division for non-Big 12 offenses, and an examination of how emerging adults' cases will likely be handled in the juvenile justice system.

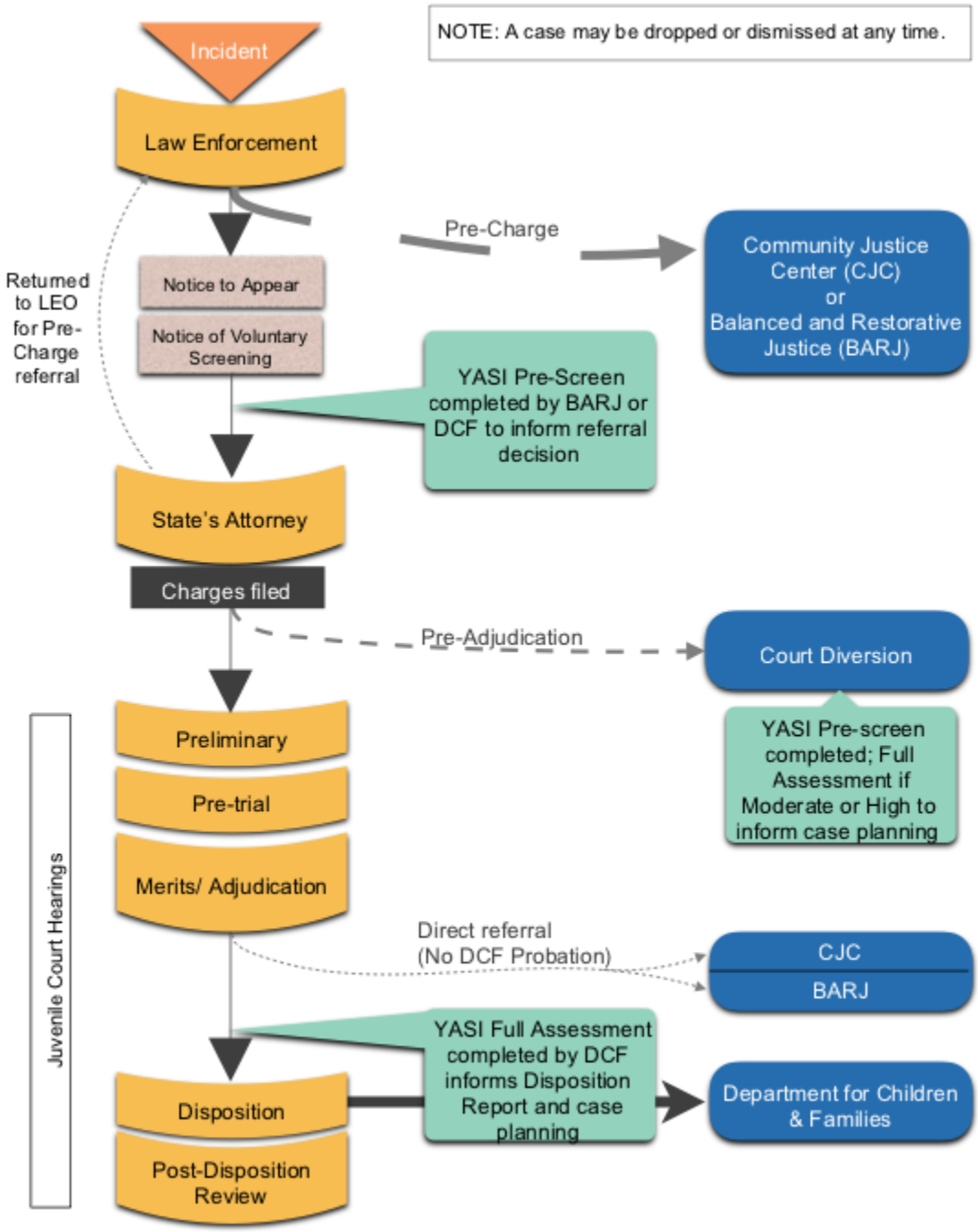
Below is a flowchart of the process for delinquency cases in the Family Division, showing the points of entry, "off ramps" (opportunities for cases to be resolved outside of the formal process), and outcomes. It is followed by a glossary comparing some of the relevant terminology (and procedures) used in the juvenile and adult systems.

Youth Justice Glossary

Below is a glossary of terms used in the Family Division, and their analogue in the Criminal Division.

Family Division	Criminal Division
Adjudication (of a delinquent act)	Conviction (of an offense)
Disposition	Sentence
Merits	Trial

Youth Justice Flowchart



Assessing the Impact of RTA

Assessing the impact of the RTA legislation on the initial entry point to the legal system requires an analysis of statewide police and pre-court diversion data, that are not currently collected.

The next significant point of contact with the juvenile and criminal justice system, for which data are available, occurs when the case is filed in court. A report of the most recent available court data on filings for non-Big 12 cases involving 18- and 19-year-olds (those case types that RTA will shift to the Family Division) show that the vast majority involve misdemeanors.

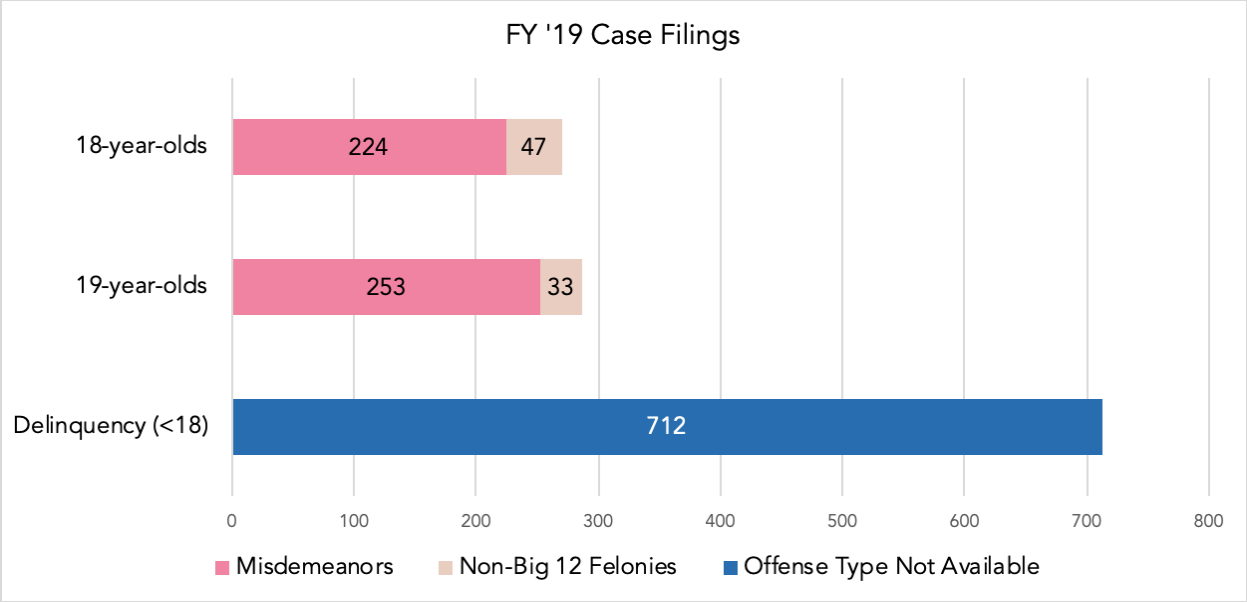


Table 1. Fiscal Year 2019 Case Filings. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds" by Judge A. Davenport, 2019, p. 2. Retrieved from the Vermont Department of Children and Family Services.

Court filing data also show that between Fiscal Years (FY) 2017 and 2019, filings for youth up to age 17, as well as youth ages 18 and 19, remained nearly the same or decreased slightly. There was a 25% increase in delinquency filings between FY17 and FY18, which decreased back to its FY17 level in FY19: This increase corresponded with Act 153's expansion of juvenile jurisdiction to include most offenses committed by 16-year-olds.[20] When Act 153 was further expanded in FY19 to include most 17-year-olds, the number of delinquency filings in that year still decreased to the pre-Act 153 level.[21]

[20] An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court, No. 153 § 1 (2016) (codified as 33 V.S.A. § 5280 (2018)).

[21] Id. Judge A. Davenport. (2019, p. 1). Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds." [Memorandum]. Retrieved from the Vermont Department of Children and Family Services. Across the United States, states that raised their upper age of juvenile jurisdiction to include older youth (under age 18) experienced similar decreases. Justice Policy Institute. (2017, pp. 8, 22, 41, 43, 54). *Raising the Age: Shifting to a Safe and More Effective Juvenile Justice System*, Washington, DC. Retrieved from http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf.

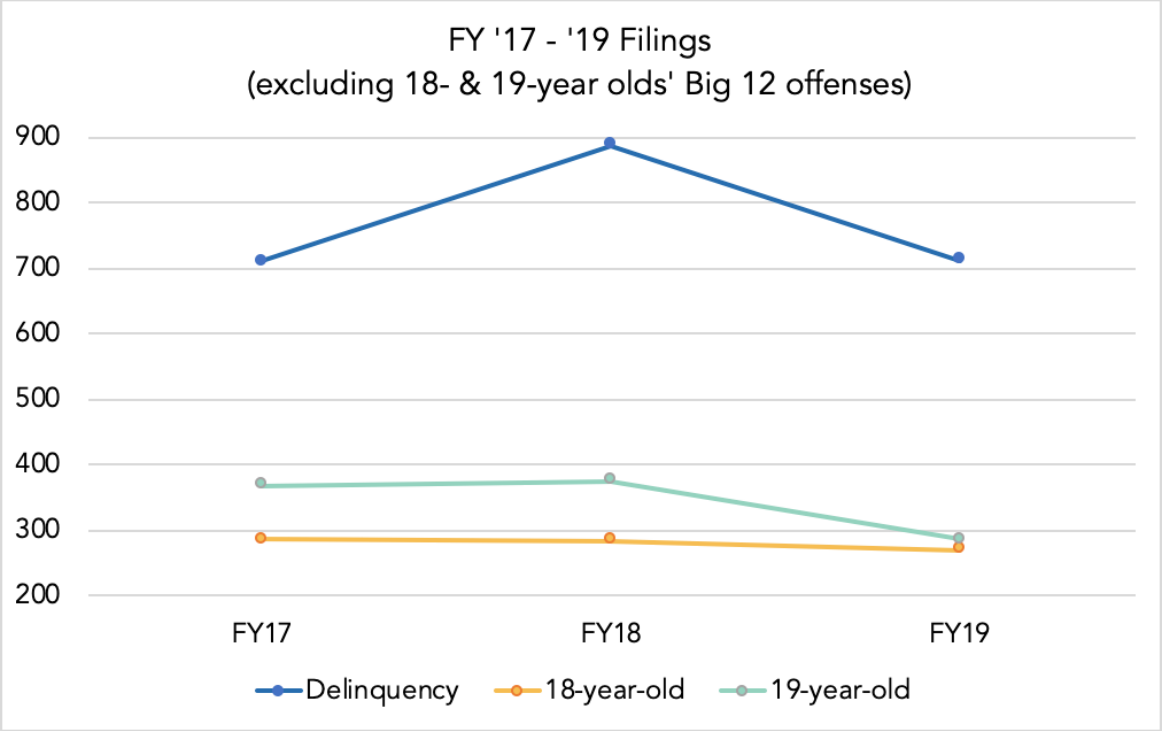


Table 2. Fiscal Years 17 - 19 Total Filings Excluding Big 12 Offenses. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds" by Judge A. Davenport, 2019, p. 2. [Memorandum]. Retrieved from the Vermont Department of Children and Family Services.

Court filing data also show that the distribution of non-Big 12 offenses for which 18- and 19-year-olds are charged generally resembles that of youth under age 18, with only slight differences. As a percentage of cases filed, public order offenses comprise the largest category of offenses for all youth, although they make up a slightly smaller percentage of the emerging adult cases filed.[22] There is a larger share of motor vehicle offenses filed against 18- and 19-year-olds, which corresponds with more opportunity for older adolescents to drive.[23]

[22] Judge A. Davenport. (2018, pp. 8, 14). *Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System*. (Unpublished report). Retrieved from the Vermont Judiciary.; Judge A. Davenport. (2019, p. 2). Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds." [Memorandum]. Retrieved from the Vermont Department of Children and Family Services.
[23] A driver's license can be obtained in Vermont at age 18. See 23 V.S.A. § 606).

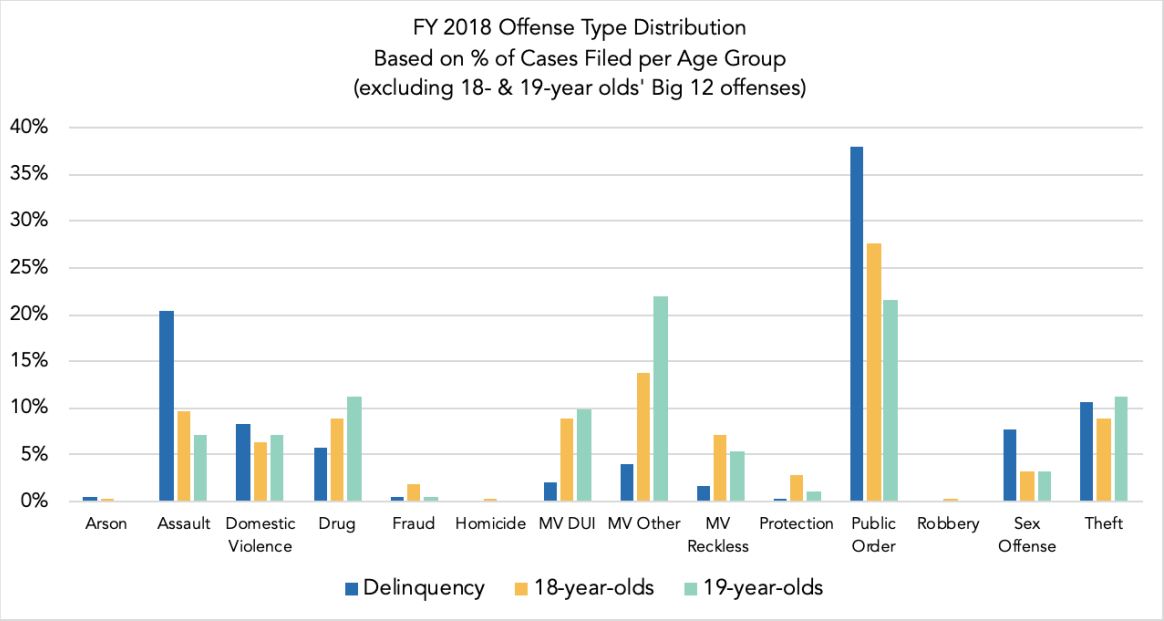


Table 3. Fiscal Year 2018, Offense Type Distribution Based on Percentage of Cases Filed per Age Group. Adapted from Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System, unpublished report, by Judge A. Davenport, 2018, p. 13. Retrieved from the Vermont Judiciary.

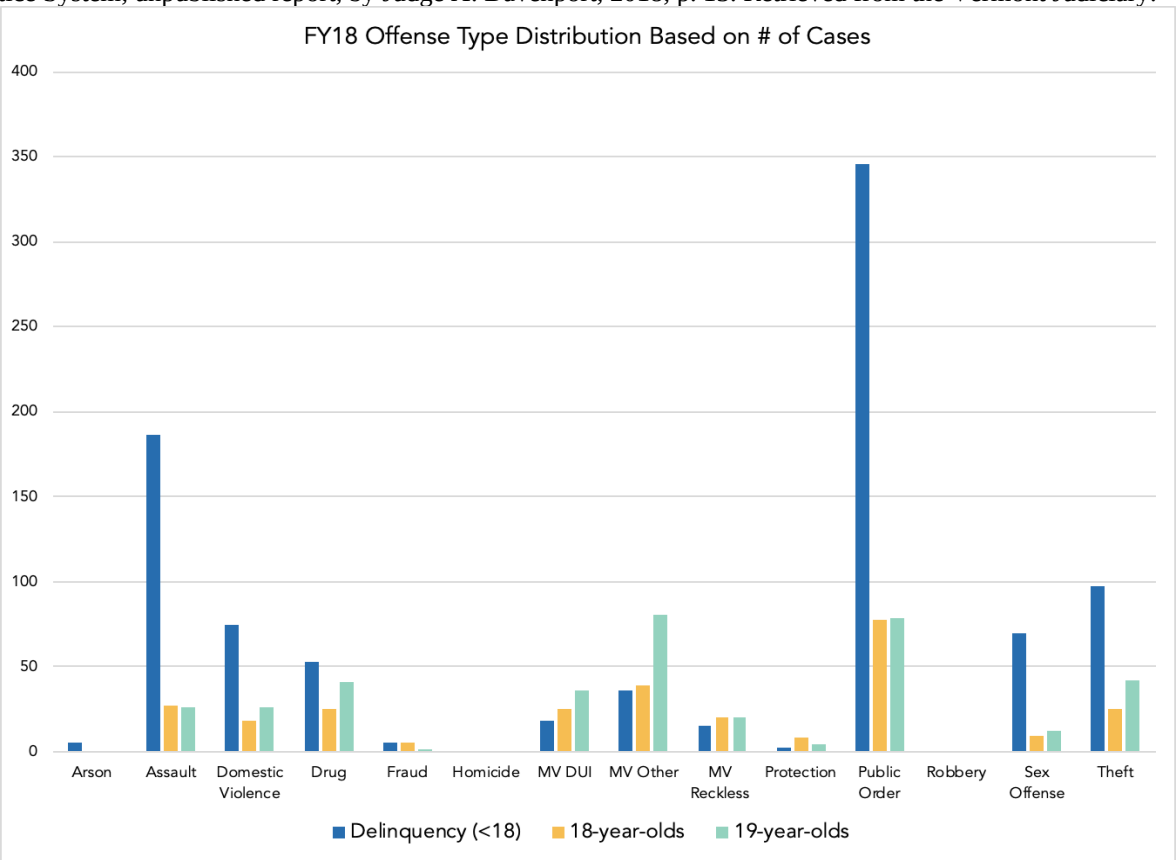


Table 4. Fiscal Year 2018, Offense Type Distribution Based on Number of Cases Filed per Age Group. Adapted from Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System, unpublished report, by Judge A. Davenport, 2018, p. 13. Retrieved from the Vermont Judiciary.

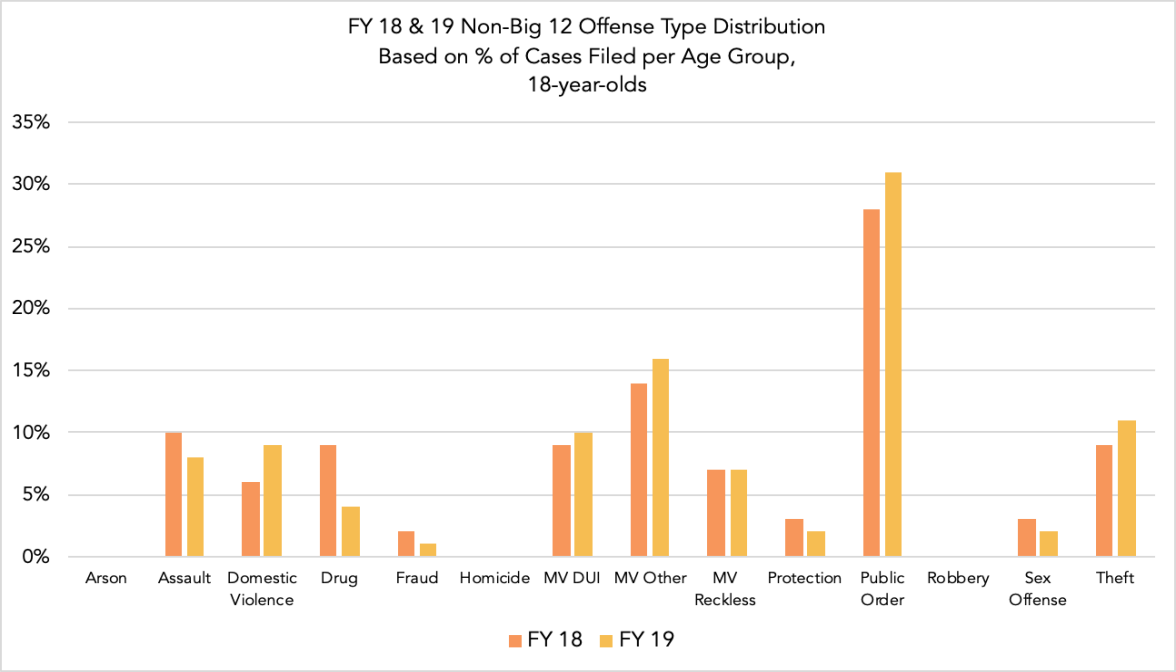


Table 5. FY18 and FY19 Non-Big 12 Offense Type Distribution Based on Percentage of Cases Filed for 18-Year-Olds. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds" by Judge A. Davenport, 2019, p. 2. [Memorandum]. Retrieved from the Vermont Department of Children and Family Services; Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System, unpublished report, by Judge A. Davenport, 2018, p. 8. Retrieved from the Vermont Judiciary.

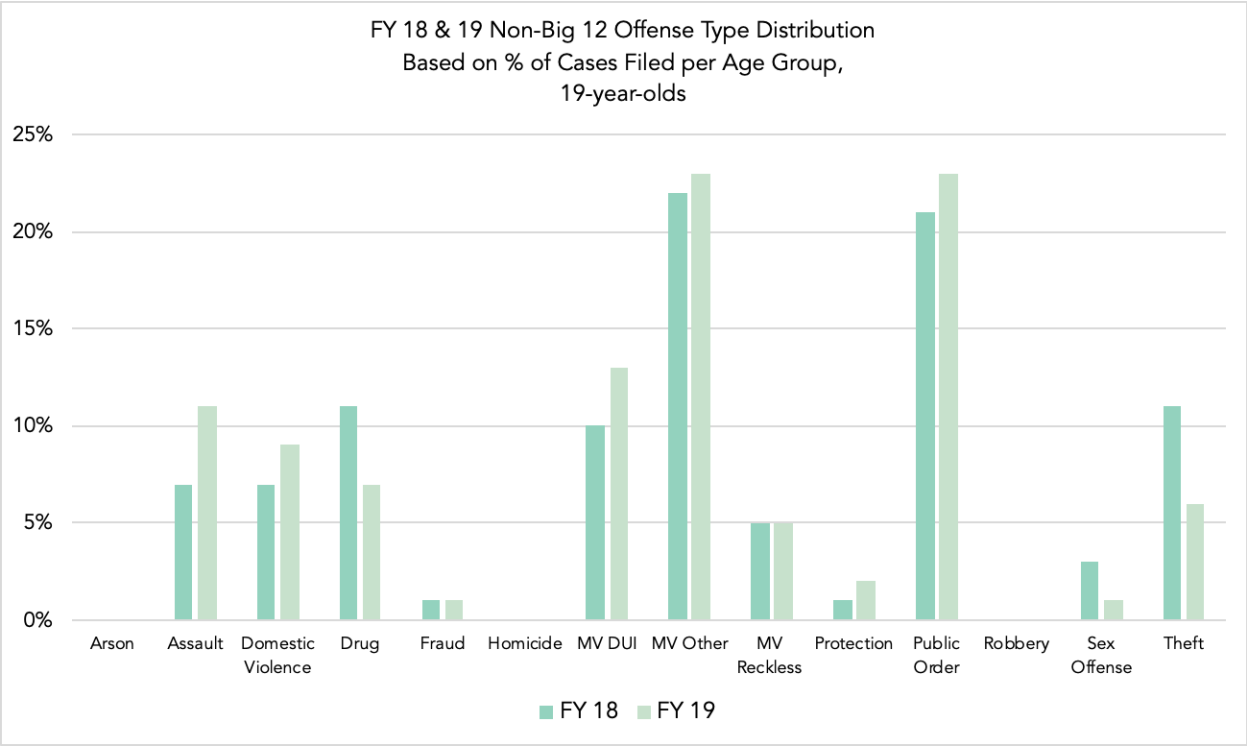
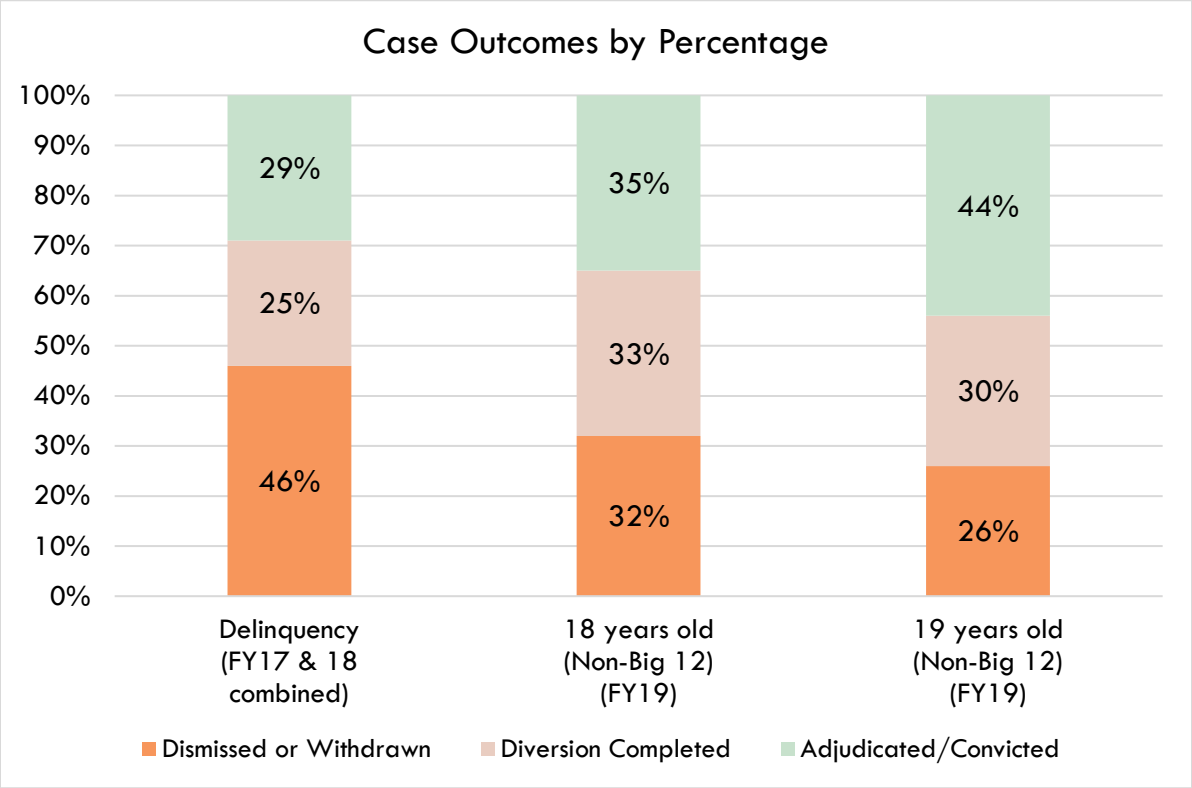


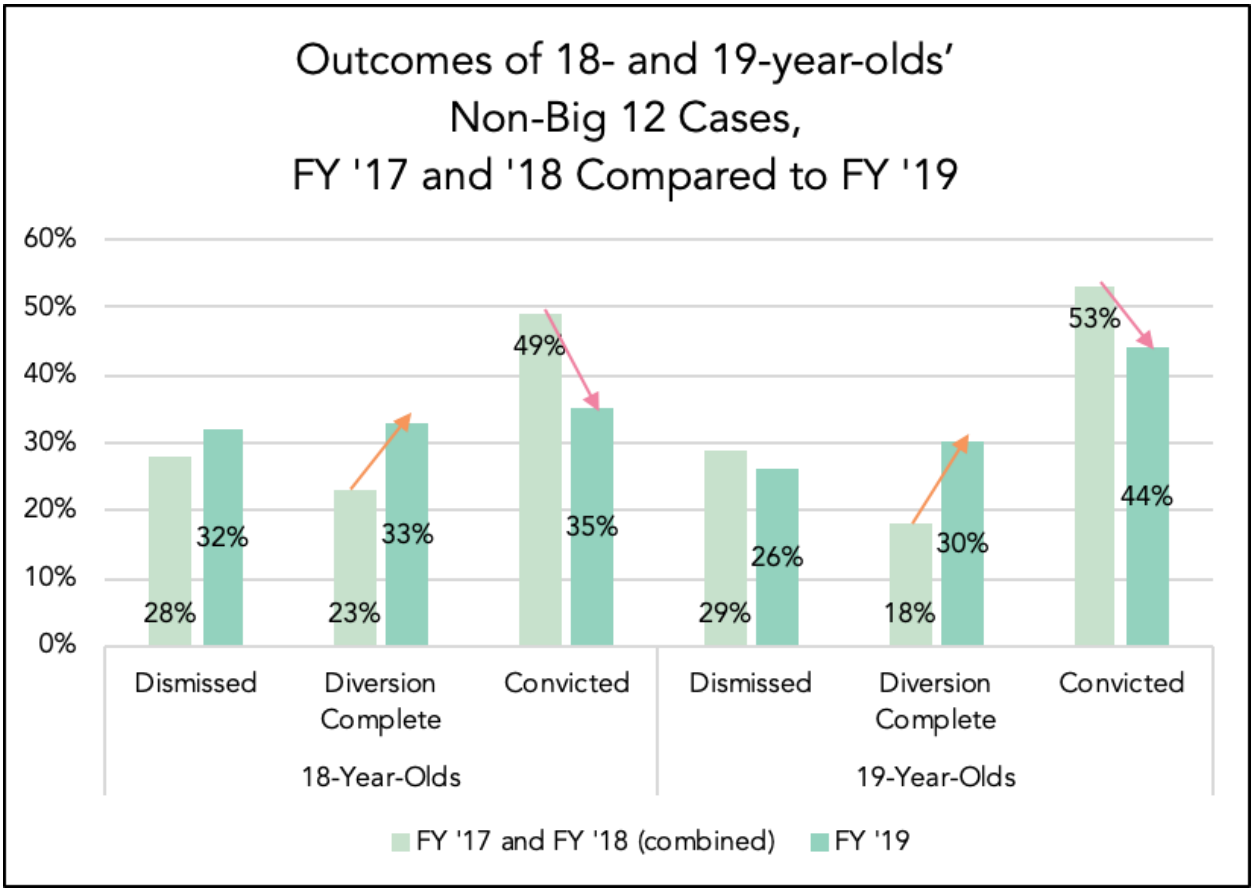
Table 6. FY18 and FY19 Non-Big 12 Offense Type Distribution Based on Percentage of Cases Filed for 19-Year-Olds. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-

Year-Olds" by Judge A. Davenport, 2019, p. 2. [Memorandum]. Retrieved from the Vermont Department of Children and Family Services; Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System, unpublished report, by Judge A. Davenport, 2018, p. 8. Retrieved from the Vermont Judiciary.

The most recent available court data on outcomes of cases involving youth under age 20[24] show that most do not make it to the adjudication stage and are instead dismissed, withdrawn, or diverted. Data from FY17 and 18 (combined) compared to FY19 data show that the percentage of non-Big 12 cases of 18- and 19-year-olds resolved through a determination of guilt decreased, and the percentage resolved through successful completion of diversion increased.

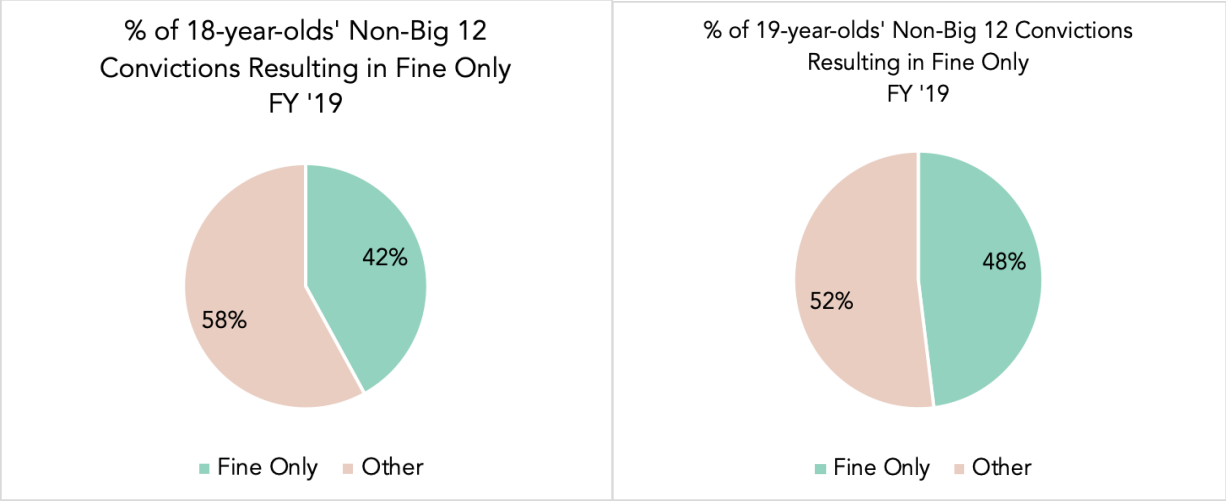


[24] Excludes cases involving 18- and 19-year-olds accused of committing Big 12 offenses.



Tables 7-8. Outcome of 18- and 19-year-olds' Non-Big 12 Cases, FY17 and 18 Compared to FY19. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds" by Judge A. Davenport, 2019, p. 3. [Memorandum]. Retrieved from the Vermont Department of Children and Family Services.

Of the non-Big 12 cases involving 18- and 19-year-olds that did result in a conviction, nearly half received a fine-only penalty.



Tables 9-10. Percent of 18- and 19-Year-Olds' Non-Big 12 Convictions Resulting in a Fine Only. Adapted from Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds" by Judge

A. Davenport, 2019, p. 3. [Memorandum]. Retrieved from the Vermont Department of Children and Family Services.

There appear to be relatively few 18- and 19-year-olds who are convicted of non-Big 12 cases and incarcerated at the Vermont Department of Corrections (DOC). Reviewing the point in time data shared by the DOC (the only data available) for the first half of 2019, there was a maximum of twelve 18- and 19-year-olds in DOC custody.[25] These data include people in DOC custody both pre- and post-conviction. The data are not necessarily an accurate indication of the number of emerging adults who will require DCF secure placement for a variety of reasons, including: 1) they may include youth whose cases involve Big 12 offenses, and 2) they report those in DOC custody who are age 18 or 19 while in custody, but they do not necessarily include all people in DOC custody who were age 18 or 19 *at the time the offense occurred*.

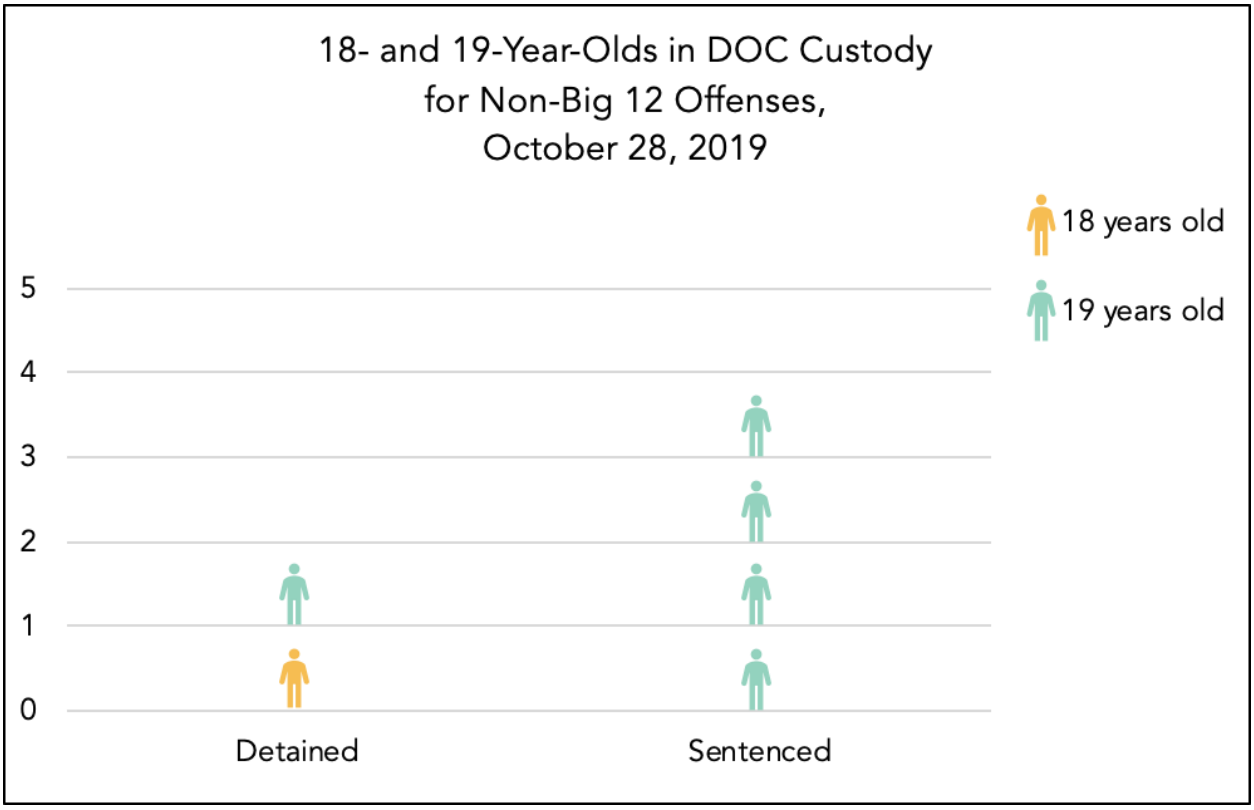


Table 11. Number of 18- and 19-Year-Olds in DOC Custody for Non-Big 12 Offenses, Point-in-Time, October 28, 2019. Retrieved by Karen Vastine from the Vermont Department of Corrections.

In addition to the number of youths in the justice system, it is imperative that Vermont examine the impact of Act 201 on systemic racial and ethnic disparities. The Juvenile Justice and Delinquency Prevention Act (JJDPA) ties eligibility of federal funds to a state's collection of relevant data on such disparities in the juvenile justice system and the steps it needs to take to

[25] Vermont Department of Corrections. (2019). Overall DOC Population Numbers for 2019 Measured Once Monthly. [Dataset]. Unpublished raw data. Retrieved from the Vermont Department of Corrections. The data do not indicate length of stay (i.e. they may count emerging adults in on "overnight stays"). This data retrieved from DOC also does not indicate the offense level, so these numbers may include emerging adults incarcerated on Big 12 offenses. These numbers additionally include persons detained prior to trial.

address those disparities. Under the leadership of the Children and Family Council for Prevention Programs, Vermont has already identified disparities in its juvenile justice system. For example, through its role as the statewide monitor of racial and ethnic disparities, it was identified that Black youth constituted 3% of the state's age 10-to-17 population, yet African American/Black youth made up 9% of delinquency cases filed in the Family Division and 8% of delinquency adjudications that were not diverted.

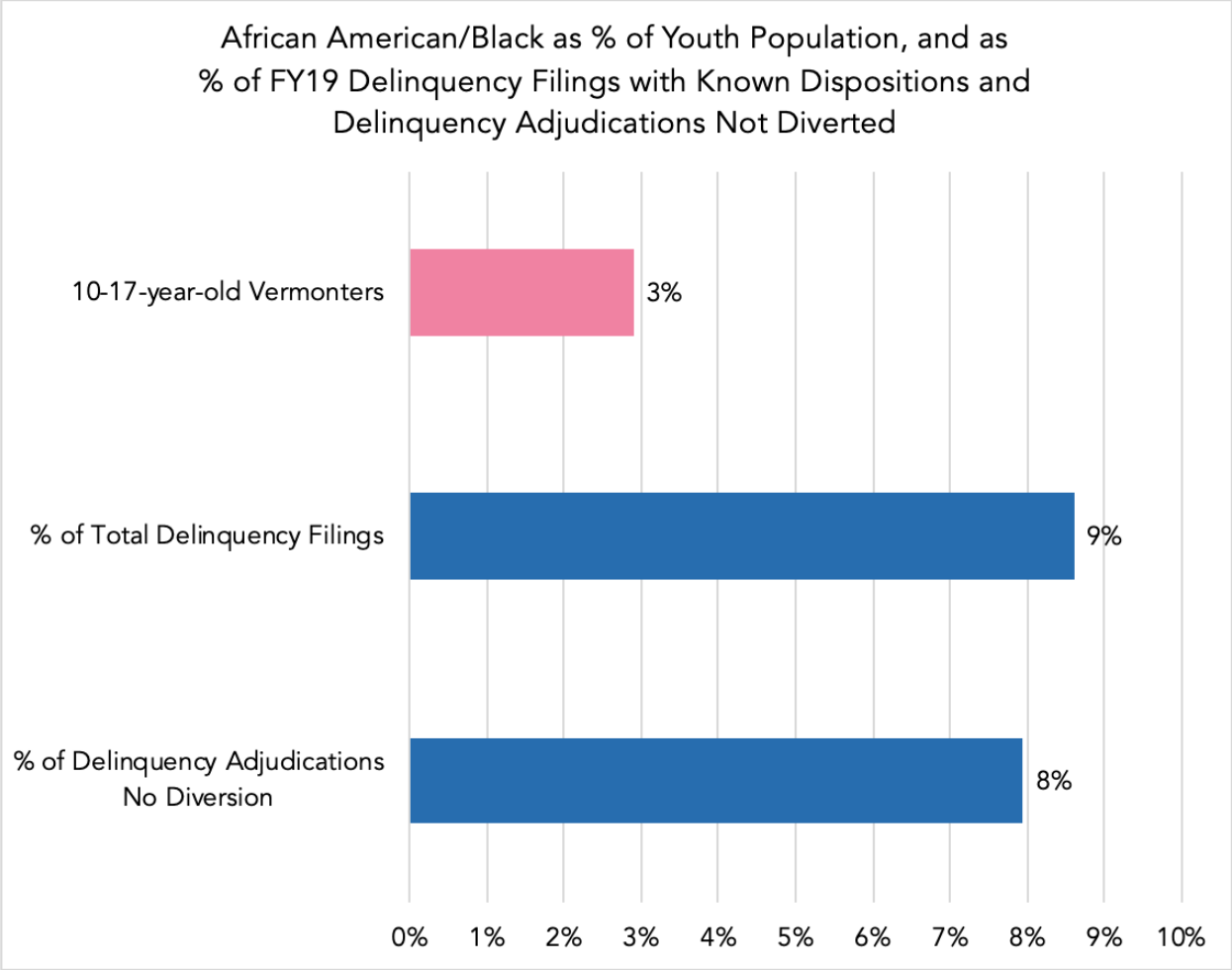


Table 12. African American/Black as Percentage of Youth Population, and as a Percentage of FY19 Delinquency Filings with Known Dispositions and Outcomes by the Vermont Department of Health, 2017. Retrieved from Michael Nyland-Funke, Vermont Department of Health[26]; Delinquent and Youth Offender FY19 Dashboard by the Vermont Judiciary. [Data file] Unpublished raw data. 2019. Retrieved from Dawn Sanborn, Vermont Judiciary, Trial Court Operations Division.[27]

We do not have enough data regarding the race and ethnicity of 18- and 19-year-olds in Vermont's Criminal Division to assess disparities. However, national data indicate that emerging adults have the most racially disparate justice system outcomes of any age group: In 2012, Black

[26] As this dataset considers Hispanic/Latino to be an "ethnicity" rather than a "race," there is no data included here about the percentage of the population in Vermont who are Hispanic/Latino.
[27] Approximately 16% of delinquency filings with known dispositions had the race/ethnicity listed as "Not Known", "Not Reported," or left blank.

male 18-to 24-year-olds constituted nearly 40% of emerging adults admitted to state and federal prisons in the U.S. and were 7 to 9 times more likely to end up in prison than their White peers.[28]

Vermont has a structure and process in place to identify and address racial and ethnic disparities in its **juvenile** justice system (in compliance with the JJDPA). By including most 18- and 19-year-olds in its juvenile justice system, Vermont is extending its existing monitoring structure to the age group with the greatest disparities nationally. This makes Vermont's implementation of Act 201 even more important and impactful.

Part III: Diversion: Increasing opportunities to divert cases from formal justice processing

Background on Diversion

Most 18- and 19-year-olds who had cases filed in the Criminal Division over the last two years were charged with low level misdemeanors, many of which were diverted, dismissed, or received a fine-only sentence. With the expansion of juvenile jurisdiction to include this population, it is necessary to ensure that those emerging adults who would not have penetrated deeply into the adult system prior to RTA will also not enter the deep end of the juvenile system following its implementation.

Research has found that the majority of young people engage in some kind of law-breaking during their teen years,[29] but will naturally desist from lawbreaking behavior by their early 20s.[30] A substantial body of research has found that contact with the justice system can interrupt normal desistance and increase recidivism and other negative outcomes for young people. Specifically, court processing has been found to increase the risk of additional delinquency when compared to diversion from formal processing.[31]

Research suggests that the most successful justice models for young people focus on the youth's positive development, scale intervention to their level of risk, and tailor it to be responsive to their individual and developmental needs. Effective approaches engage youth and their families in developing plans that build on youth strengths (rather than focusing on youth deficits), and engage youth in developmentally normative activities (for more, see Appendix C on Positive Youth Justice).

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[28] Carson, E.A., and Golinelli, D. (2014). "Prisoners in 2012: Trends in Admissions and Releases, 1991-2012." U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics.

[29] "Some lawbreaking experience at some time during adolescence is nearly universal in American children." National Research Council and Institute of Medicine. (2001, p. 68). Juvenile Crime, Juvenile Justice: Panel on Juvenile Crime: Prevention, Treatment, and Control. McCord, J., Widom, C. S., & Crowell, N. A. (Eds.). Committee on Law and Justice and Board on Children, Youth, and Families. Washington, DC: National Academy Press. doi: 10.17226/9747.

[30] National Institute of Justice. (2014). From Juvenile Delinquency to Young Adult Offending. Retrieved from https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending#reports.

[31] Petrosino, A. J., Guckenburg, S., & Turpin-Petrosino, C. (2013). Formal System Processing of Juveniles Effects on Delinquency. (Crime Prevention Research Review No. 9). U.S. Department of Justice, Office of Community Oriented Policing Services. Retrieved from https://permanent.access.gpo.gov/gpo59099/cops-p265-pub.pdf.

Current State of Diversion

As in most states, diversion in Vermont occurs both informally – when a police officer or State's Attorney (SA) uses their discretion to handle an incident without referring the case to any program—and formally, through a referral to a program, either prior to or after a charge is filed in court.

Over the last four decades, Vermont has implemented a number of statutory and policy reforms that have resulted in a statewide infrastructure to offer individuals facing charges a continuum of alternatives to further court involvement (informally referred to as "off-ramps"). The existing diversion system includes, but is not limited to, pre-charge diversion, civil fine programs, post-charge Court Diversion, and substance abuse treatment and other programs offered in lieu of prosecution. Many diversion opportunities in Vermont are rooted in a restorative justice framework, and utilizing the Sequential Intercept Model, the Scaling Up Restorative Justice Work Group recommended that restorative approaches be used at every stage in the justice system.[32]

Pre-Charge Opportunities for Diversion

Informal diversion pre-charge can include everything from a police officer sending a young person home or calling a parent, to a State's Attorney ("SA") deciding after a preliminary investigation not to file charges. While formal pre-charge opportunities for diversion may theoretically be offered by any community-based restorative justice (CBRJ) program, the two main pre-charge diversion programs are the DOC-funded "restorative justice panels" and related programs, which are primarily offered through Vermont's Community Justice Centers (CJCs) system, and Balanced and Restorative Justice (BARJ) programs, which also may be offered through a CJC.[33] BARJ programs are funded by DCF, and they work closely with DCF Family Services Workers who supervise justice-involved youth.

Department of Corrections Pre-Charge Programs

DOC funded pre-charge diversionary options are primarily offered through the Vermont CJCs. Currently, there are 20 CJCs across the state, operated by both non-profit and municipal entities, including local police departments. CJCs use a mix of paid staff and community volunteers, the latter of whom often staff "Restorative Justice Panels" that help design and ensure compliance

[32] Vermont Association of Court Diversion Programs, The Community Justice Network of Vermont, Balanced and Restorative Justice Providers, The Department for Children and Families, & The Attorney General's Office. (2014, p. 1). *Strengthening Restorative Justice: A Progress Report for the Joint Committee on Corrections Oversight*. *Strengthening Restorative Justice: A Progress Report for the Joint Committee on Corrections Oversight*. Retrieved from https://humanservices.vermont.gov/boards-committees/cfcpp/meeting-packets/2014-meetings-agendas-and-minutes/mar-2014/strengthening-restorative-justice-report/view. ("In this report we envision and recommend using restorative justice options at all intercept points as a means of increasing offender accountability and victim satisfaction, decreasing recidivism, and saving money. We explain below the opportunities at each intercept point. We also include an additional intercept point that precedes the others – the community building necessary to create a foundation for civic engagement that is empowering and prepares people to be accountable for their actions and in relation to one another.").

[33] Vermont Department of State's Attorneys & Sheriffs. (2015, pp. 1-3). Pre-Arraignment Alternative Justice Programs in Vermont. Retrieved from https://legislature.vermont.gov/assets/Legislative-Reports/Pre-Arr-Alternative-Justice-Rpt-2015.pdf.

with individualized Restorative Justice Agreements.[34] Programming at CJCs is primarily driven by the funding available pursuant to state contracts for which the CJC providers bid, though some CJCs are able to supplement state funds with their own fundraising.

Currently, all CJCs can (but not all do) provide pre-charge diversion services to both youth and adults. As a result, staff at most CJCs are already familiar with the needs of both younger and older (18+) adolescents. Some CJCs offer pre-charge diversion programming that is specifically tailored for youth and "Youth Panels" with younger volunteers and more age-specific community or restorative/reparative options. A handful of CJCs also work directly with school systems to help them adopt more restorative approaches to in-school conflicts, and some also offer schools the chance to use the CJCs to conduct a restorative process with students. Finally, some CJCs offer options for referred youth beyond the panels, including lower-level interventions (such as writing a letter, or watching an educational video) for youth whose profile indicates that a "light touch" is warranted.

Balanced and Restorative Justice (BARJ) Programs

DCF funds 11 Balanced and Restorative Justice (BARJ) programs to work closely with all 12 district offices. The programs of BARJ are specifically tailored to young people, and which may be offered at any stage in the proceedings (including after a charge is filed but prior to adjudication, through ten of the eleven Court Diversion Programs). BARJ works with any youth at risk of justice involvement, including youth who are truant. BARJ services include: Youth Assessment Screening Instrument (YASI) screening, restorative justice processes (panels, circles and Restorative Family Group Conferencing), restitution, case management (including curfew checks, drug screening, and home visits), and skill building groups. Because BARJ services are often used for youth after an adjudication, not all providers or counties appear to be aware that BARJ may be made available to youth pre-charge.[35]

Post-Charge Opportunities for Diversion: Court Diversion

There are currently fourteen Court Diversion programs offered in Vermont,[36] which are run under the auspices of the Vermont Attorney General (AG). Court Diversion programs are created by statute,[37] and funding is provided by the AG, client fees, and local financial support.[38] In addition to statutorily-required Court Diversion services for the Criminal and Family Divisions of the Superior Court, each of these programs also offer Youth Substance Abuse Safety Program (YSASP), Tamarack and Pretrial Services (for adults only), and a program to restore a suspended

[34] The Vermont Crime Research Group has found that participants in these Restorative Panels have significantly lower recidivism rates than comparable individuals who did not experience panels. Vermont Center for Justice Research. (2014, p. 2). Vermont Community Justice Center Reparative Panel Programs: Outcome Evaluation Final Report. Retrieved from http://www.crgvt.org/uploads/5/2/2/2/52222091/vermont_cjc_outcome_eval_5-6-14c.pdf.
[35] Vermont Department for Children and Families. (n.d.). Balanced & Restorative Justice (BARJ). Retrieved from https://dcf.vermont.gov/youth/justice/BARJ.
[36] Vermont Department of State's Attorneys & Sheriffs. (2015, p. 4). Pre-Arraignment Alternative Justice Programs in Vermont. Retrieved from https://legislature.vermont.gov/assets/Legislative-Reports/Pre-Arr-Alternative-Justice-Rpt-2015.pdf.
[37] 3 V.S.A. §§ 163-164.
[38] Vermont Department of State's Attorneys & Sheriffs. (2015, p. 4). Pre-Arraignment Alternative Justice Programs in Vermont. Retrieved from https://legislature.vermont.gov/assets/Legislative-Reports/Pre-Arr-Alternative-Justice-Rpt-2015.pdf.

driver's license. Because Court Diversion is offered in both Family and Criminal Divisions, providers offering this suite of services are already familiar with both younger and older adolescents.

Each SA develops their own criteria for referral to Court Diversion, which vary from county to county.[39] Under a recent statutory change, referral to Court Diversion is statutorily presumed for all youth in the Family Division who, prior to a preliminary hearing, are screened by DCF Family Services Workers or a BARJ provider and determined to be low or moderate risk on a screening tool (currently the YASI), "unless the State's Attorney states on the record why a referral to court diversion would not serve the ends of justice."[40] While the legislative intent appears to have been to expand the use of pre-merits diversion, it has been reported that the 'ends of justice' provision lacks clarity.

The vast majority of Court Diversion participants complete their contracts successfully (83% of Court Diversion and 94% of YSASP participants).[41] Most young people who participate in Court Diversion are first-timers within the justice system.

Diversion Findings

While the statutory and policy scheme in Vermont envisions a comprehensive continuum of alternative justice pathways for both young people and adults, the realization of this vision varies from county to county. These disparities may be driven by differences in local practices—whether a school refers a discipline issue to court, a police officer decides to connect a family with a community program instead of making an arrest, or a SA decides to refer a case to a local CJC—as well as local decisions about funding, such as a Community Justice Center deciding to seek funding for Court Diversion. In addition to the variety in the programs offered in different jurisdictions, there is also variety in training and practice. The result is "Justice by Geography," with some youth receiving different opportunities to access alternative justice pathways because of where they live. This means that under the current scheme a significant number of low-level cases penetrate deeply into the justice system, cases that could instead be appropriately diverted if systemic adjustments were made.

The effort to expand diversion must ensure that it is used only for youth who would have otherwise penetrated deeper and not to draw in youth who would otherwise have not come into contact with the justice system.[42] For example, there is already concern that schools and police in Vermont use CJC pre-charge programs as an alternative to school discipline or informal

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[39] While charges referred to Court Diversion frequently include low-level, first-time misdemeanors, and may include felonies, some prosecutors will not refer individuals who have previous charges or who are charged with particular offenses, such as DUI and fishing and hunting-related charges. In addition, Court Diversion programs do not accept most cases involving intimate partner violence. Vermont Department of State's Attorneys & Sheriffs. (2015, p. 5). Pre-Arraignment Alternative Justice Programs in Vermont. Retrieved from https://legislature.vermont.gov/assets/Legislative-Reports/Pre-Arr-Alternative-Justice-Rpt-2015.pdf.

[40] 33 V.S.A. § 5225(c).

[41] Office of the Attorney General. (2018, p. 1). Court Diversion Fiscal Year 2018. Retrieved from https://ago.vermont.gov/wp-content/uploads/2018/01/FY18-Court-Diversion-Budget-Proposal.pdf.

[42] This tendency was originally referred to as "net widening" by Stanley Cohen in 1979. See Cohen, S. (1979) The punitive city: Notes on the dispersal of social control. *Crime, Law and Social Change 3*(4): 339–363.

diversion. Pre-charge programs should be an alternative to court involvement, not a substitute for traditional, informal handling.

Diversion Recommendations

There are many ways to significantly expand the population of youth whose cases are handled outside of the traditional court process so the court and DCF can focus available resources on youth who will most benefit from them. With that in mind, the following recommendations are structured as goals and targets, with a menu of possibilities for accomplishing those goals. Each of the enumerated recommendations would help smooth the implementation of the Raise the Age legislation, while also ensuring that the state's scarce resources are most effectively used.

Brief Description of Recommendation	Benchmarks/Milestones	Who is responsible
JJ Stakeholder group approach Agency of Education to collaborate on the schools' role for overseeing and providing guidance on school-based issues so issues are handled internally.	February or March of 2020	DCF and members of the stakeholder group
Outreach to law enforcement (Department of Public Safety and the Criminal Justice Training Council) regarding increasing training and support for schools and police. Subsequent collaboration to increase training.	February or March of 2020 for outreach, complete training by December 2021.	DCF and SAs
Increase the use of pre-charge diversion for youth at CBRJs, with the four-year goal of diverting 50-60% of cases pre-charge.	December 2023	All stakeholders involved with one or all strategies to achieve this benchmark.
Expand and refine the Family Division's diversion programs, with the four-year goal of diverting an additional 25-30% of cases pre-merits. Expand programs targeted at particular issues such as the Youth Substance Abuse Safety Program, Tamarack, and other youth specific programming.[43] Additionally, DCF evaluate	December 2023	All stakeholders involved with one or all strategies to achieve this benchmark.

[43] As noted above, a significant percentage of cases filed against 18- and 19-year-olds involve motor vehicle offenses. DCF can take the lead in developing targeted, developmentally appropriate approaches to motor vehicle offenses (including an e-learning module) and to assisting young people in the process of reinstating their licenses.

BARJ's role with respect to its delineation of services and whether it's the correct balance of delinquent and non-delinquent caseload (i.e. truancy).		
Long-term strategy: Evaluate and address other barriers to youth entering or completing diversion programs. Short-term strategy: use text messages to remind diversion participants of their required meetings.	Complete evaluation: 7.1.20 Address barriers: 12.31.20	DCF, DOC, and AGO

Part IV: Maximizing the Efficiency of the Family Division of the Superior Court Process

Juvenile justice system stakeholders, including those from traditionally opposing perspectives, agree that streamlining the delinquency court process for *all* youth (including those accused of non-Big 12 lawbreaking as 18- and 19-year-olds, who will be under the jurisdiction of the Family Division following Act 201 implementation) would greatly enhance the state's ability to smoothly implement the Raise the Age law.

An intervention must be timely in order to be a developmentally appropriate response for emerging adults. Currently, some cases in the Family Division extend beyond 60 days, which is problematic for everyone involved. Long case lengths also make it more challenging to provide meaningful interventions for the charged youth.

A number of strategies implemented outside of formal juvenile delinquency proceedings would support greater case efficiencies:

- Increased use of pre-charge diversion;
- Increased collaboration among stakeholders;
- Use of calendar calls to prioritize scheduling; and
- Continued exploration of ways to reduce pressures on other Family Division dockets, especially Children in Need of Care or Supervision cases (CHINS).

Within the formal court process,[44] the Stakeholders Group recommends shortened, prescribed timelines, to which judges would ensure adherence. The Stakeholders Group has agreed to pilot the process described below in two counties.

- A 45-day court process from the preliminary hearing to disposition;
- The Court will block schedule "pre-trial conferences" 15 days after the preliminary hearing, during which:

[44] A flow chart showing the delinquency court process can be found in the section entitled "Impact of Raising the Age" above.

- Attorneys and DCF (when available and appropriate) meet at the court to discuss settlement of the case; if resolved, the stipulation to merits/disposition will be presented to the court during the block schedule; if not resolved, the parties will report the results of the settlement discussions to the court.
- Any cases not resolved through pre-trial conferences will be scheduled for Final Pre-Trial within 15 days of the pre-trial conference and a merits hearing will be scheduled within 30 days; all dispositive motions will be filed no later than the Final Pre-Trial conference.
- The parties will ensure the victim's voice is incorporated throughout the process.
- If the case goes to trial, merits will be set within 30 days of the pre-trial conference.

Maximizing the Efficiency of the Family Division Recommendations

Brief Description of Recommendation	Benchmarks/ Milestones	Who is responsible
New mandatory court timelines – Preliminary hearing to disposition = 45 days.	Immediate: Pilot in two counties Analyze and expand pilots: 1.1.21	Judiciary and all stakeholders
Improve case processing so cases move through the court process as quickly as possible. Strengthen the use of non-court time to manage schedules and reach case resolution by Adding required (pre-trial) case conference where the parties confer on case.	Immediate: Include in pilot	Judiciary and all stakeholders

Part V: Ensuring a Full Continuum of Non-Custodial Post-Merits Options

Background on Non-Custodial Post-Merits Options

A large majority of delinquency cases that currently reach the post-merits stage in the Family Division receive Probation Certificates, putting these youth under ongoing Department for Children and Families (DCF) supervision, in some cases for long terms. If this trend continues when Act 201 is implemented, it will likely saddle DCF with larger-than-necessary and unmanageable caseloads. Further, best practices in the probation field, supported by growing evidence, suggest: (a) youth who are low-risk and accused of lesser offenses should not be placed on probation, because doing so can increase their likelihood of re-offense; (b) shorter and more focused probation terms (capped at 6-12 months) are preferred over lengthier terms that

tend to lose their focus and serve as trip-wires to revocations; and (3) further reducing probation terms through the use of "merit time" earned through goal attainment/improved behavior provides a powerful incentive for youth under supervision.

The Criminal Division, on the other hand, issues financial sanctions to nearly half the emerging adults convicted of non-Big 12 offenses, most of whom are likely to be low-risk.[45] In these cases, timely and full payment of the fine means that no further contact with the legal system is required. Fines are therefore generally considered a "light-touch" result of the legal system as compared to more burdensome sentences such as programming, probation supervision, or loss of liberty. Fines are not a dispositional option in the Family Division.[46]

Because DCF probation is currently the default Family Division disposition, it seems likely that it will be ordered in emerging adults' cases that, prior to Act 201 implementation, would have received a fine-only punishment in the Criminal Division. This may overwhelm DCF's caseload, as the Department's current probation practice is already overused, labor intensive, and lengthy.

Current State of Non-Custodial Post-Merits Options

Overview of Juvenile Disposition Practice in Vermont

Under the current scheme in Vermont, after merits[47] have been found in a delinquency case, the court can either proceed directly to disposition (if all parties agree) or it can order the Department for Children and Families (DCF) to create a dispositional case plan no later than seven business days before the disposition hearing.[48] Using the YASI (pre-screen or full assessment), the DCF Family Services Worker prepares a disposition case plan that guides the court in determining a disposition. The disposition case plan "shall include, as appropriate. . . [p]roposed conditions of probation which address the identified risks and provide for, to the extent possible, repair of the harm to victims and the community. Proposed conditions may include a recommendation as to the term of probation."[49] The court is then to refer to this disposition case plan in determining the disposition and setting conditions. The court makes orders at disposition that provide for: the child's supervision, care, and rehabilitation; the protection of the community; accountability to victims and the community for offenses

[45] Judge A. Davenport. (2018, p. 21). *Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System*. (Unpublished report). Retrieved from the Vermont Judiciary. (Noting that fines are generally reserved for those deemed to be at a lower level of risk of re-offense). Information regarding the average amount of fines imposed, the rate at which emerging adults pay the fines, and the frequency with which penalties are issued for failure to pay fines was unavailable as of this writing.

[46] See 33 V.S.A. § 5232(b) (listing the possible dispositional options a court may order).

[47] "Merits" is the term used by practitioners in Vermont to refer to a determination made about the strength (or merits) of the claim made in the petition (accusatory instrument) against the youth in a delinquency case. See, for example, 33 V.S.A. § 5227(a)("In the event there is no admission or dismissal at the pretrial hearing, the Court shall set the matter for a hearing to adjudicate the merits of the petition.") An adjudication of merits is analogous to a conviction in the Criminal Division.

[48] 33 V.S.A. § 5229 (g)-(h); but see subsection V. for discussion on whether the court's direct referral of the youth to a community justice center is to occur before or at disposition. The disposition hearing is to be held no later than 35 days after the merits finding. 33 V.S.A. § 5529(g).

[49] 33 V.S.A. § 5230(b)(5); See also DCF Policy 162 Vermont Department for Children and Families. (2018, p. 10). Policy 162: Juvenile Probation. Family Services Policy Manual. Retrieved at https://dcf.vermont.gov/sites/dcf/files/FSD/Policies/162.pdf.

committed; and the development of competencies to enable the child to become a responsible and productive member of the community.[50]

If probation is ordered, which most often occurs, then the Court will issue a Probation Certificate that outlines the conditions that it "deems necessary to ensure to the greatest extent reasonably possible that the juvenile will be provided a program of treatment, training, and rehabilitation consistent with the protection of the public interest."[51] As mentioned above, data provided by the Vermont Judiciary confirms that a large majority of the cases reported as disposed[52] result in probation. DCF family service workers are responsible for overseeing youth probation, and DCF will be serving the youth prosecuted in the Family Division for lawbreaking at age 18 and 19 when Act 201 is fully implemented.

Non-Custodial Dispositions Other than Probation

Direct Referral by the Court to a Community-Based Provider

Instead of placing the youth on probation, the Court can directly refer the youth to a "youth-appropriate community-based provider that has been approved by the Department [for Children and Families], which may include a community justice center or a balanced and restorative justice program."[53] This diversion-like case outcome does not require the court to place the child on probation. Id. The statute stipulates that if the community-based provider does not accept the case or the young person does not successfully complete the program "in a manner deemed satisfactory and timely by the provider," the child is to "return to court for disposition."[54] Id. While this language seems to imply that this direct referral is to occur prior to disposition, it is included in the "Disposition Order" statute. This seems to have caused confusion statewide regarding at what stage in the process a court can directly refer the youth. Conversations with representatives from DCF and the courts indicate that while judges in some jurisdictions waive disposition and directly refer cases, many judges see direct referral as a dispositional option and therefore do not issue it prior to the dispositional phase.[55]

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[50] 33 V.S.A. § 5232(a)(1)-(4).

[51] 33 V.S.A. § 5232(b)(1); 33 V.S.A. § 5262(a). In Youthful Offender (YO) cases, DCF and DOC administer probation together. 33 V.S.A. § 5284(d). Youth who are taken into DCF custody prior to a merits determination can also be put on probation. See 33 V.S.A. §§ 5230(b)(5), (c). (stating that the disposition case plan for a child in DCF custody prior to a merits determination should include, among other things, proposed conditions of probation, which may include a recommendation as to the term of probation."

[52] Vermont statute defines a "delinquent child" to mean "a child who has been adjudicated to have committed a delinquent act," however, the court's data appears to use the term "disposed delinquent" for all cases that have been adjudicated delinquent. 33 V.S.A. § 5102(10). Conversations with DCF workers and court representatives suggest that when merits are found, some courts "waive disposition" and directly refer youth to community justice programs. It is not clear whether these cases are categorized by the court as "disposed."

[53] 33 V.S.A. § 5232(b)(7) ("Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.").

[54] The court's Referral to Approved Community Justice Program form also indicates that disposition is to occur if the community justice program does not accept the youth's case or if the youth fails to complete the program to the satisfaction of the program. See Referral to Approved Community Justice Program, Form 400-00124. Retrieved from https://www.vermontjudiciary.org/sites/default/files/documents/400-00124.pdf.

[55] Judges can, however, proceed directly from merits to disposition, effectively waiving DCF's preparation of the predisposition YASI screening and creation of a disposition case plan. 33 V.S.A. § 5229(h). Still, other judges do

Custody to Custodial or Noncustodial Parent, Guardian, Custodian, Relative, or Person with Significant Connection to the Child

Subsections (b)(2) and (b)(3) of 33 V.S.A. § 5232 allow the court to order a child found delinquent to the custody of a custodial parent, guardian, custodian, noncustodial parent, relative, or person with a significant connection to the child. This custody is for a fixed period of time and may be accompanied by court ordered conditions "as the court may deem necessary and sufficient to provide for the safety of the child and the community," which may include protective supervision.[56] Thus, a plain reading of the statute suggests that it is a dispositional option to send the youth home, with or without conditions.

Juvenile Probation Data

In Fiscal Year 2019, the number and percentage of delinquency cases resulting in probation declined as compared to previous years. This is particularly remarkable given that the FY19 data reflects the first full year in which most cases involving 17-year-olds were filed in the Family Division.[57] Though FY19 exhibited a decrease in delinquency dispositions to probation, still over two thirds of those disposed received Probation Certificates. The number of cases disposed to probation varies dramatically between different counties.

Overall, the number of cases on DCF probation rose by approximately 25% in FY19, due to the increase in Youthful Offender (YO) cases.[58] Nearly half of the FY19 YO cases involved 18- and 19-year-olds.[59] It is likely that when Act 201 is implemented, many of the 18- and 19-year-olds' case types that are currently being treated as YOs will instead be filed as delinquency matters.

Fines Data

The data provided to DCF by Judge Amy Davenport (Ret.) show that in Fiscal Years 2017 and 2018, 43% of the non-Big 12 convictions of 18-year-olds and 45% of the non-Big 12 convictions of 19-year-olds resulted in a fine-only punishment.[60] According to Judge Davenport, a fine-only sentence is often used by Vermont judges for first-time offenses (when the defendant has no

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not use direct referral and instead order probation where the primary condition is to participate in a community program.

[56] 33 V.S.A. § 5232. Protective supervision is "the authority granted by the court to [DCF] . . . to take reasonable steps to monitor compliance with the court's conditional custody order, including unannounced visits to the home in which the child currently resides." 33 V.S.A. § 5102 (24).

[57] An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court, No. 153 §9(d)-(e), (2016) (codified as 33 V.S.A. §5201 (2017)).

[58] An act relating to juvenile jurisdiction, No. 72, § 5 (2017) (codified in 33 V.S.A. § 5280 (2018)) (providing that defendants under 22 years old can move to be treated as a "youthful offender" and thus be transferred to the Family Division.)

[59] Judge A. Davenport. (2019, September 18). [Personal Communication, E-mail].

[60] Judge A. Davenport. (2018, p. 21). *Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System*. (Unpublished report). Retrieved from the Vermont Judiciary. In Fiscal Year 2019, 42% of the non-Big 12 convictions of 18-year-olds and 48% of the non-Big 12 convictions of 19-year-olds resulted in a disposition of a fine only. Judge A. Davenport. (2019, p. 3). Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds." [Memorandum]. Retrieved from the Vermont Department of Children and Family Services. Only the non-Big 12 offenses committed by 18- and 19-year-olds will be under the purview of the juvenile court following the implementation of Act 201, so only those non-Big 12 crimes are relevant for our analysis here.

prior record), and is the standard sentence for first-time Driving Under the Influence (DUI) cases.[61] In Fiscal Years 17 and 18, half of the non-Big 12 cases of 18- and 19-year-olds that resulted in a conviction and fine only were for motor vehicle offenses, with 36% for driving while intoxicated/driving under the influence (18% of fine-only cases total).[62] The next largest category of these fine-only cases involved public order offenses.

Findings Related to Non-Custodial Post-Merits Options

Research Opposes Use of Fines in the Family Division

Research suggests numerous reasons not to include fines in the Family Division that ultimately outweigh any potential advantages. These reasons include:

- Fines are intended to punish, and they therefore contravene the rehabilitative goals of the Family Division.[63]
- Emerging adults have high rates of unemployment and therefore are less likely to be able to pay.[64]
- Payment of youths' fines tends to fall on families and is particularly burdensome to low-income families.[65]

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[61] Judge A. Davenport. (2018, p. 20). *Preparing to Implement Act 201: Using Court Data to Understand the Impact of Act 201 on the Juvenile Justice System*. (Unpublished report). Retrieved from the Vermont Judiciary. However, Judge Davenport reports that first-time DUIs also involve civil licenses suspension and requirement to take CRASH in order to reclaim one's license.

[62] Vermont Judiciary. (2018). FY17 and 18: Fine Only Data for 18- and 19-Year-Olds. [Data file]. Unpublished raw data.

[63] 33 V.S.A. § 5101(a)(2) (Stating that a purpose of the juvenile system is "to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation"); see also In re D.K., 191 Vt. 328, 338 ("Juvenile proceedings are aimed primarily at protecting and rehabilitating youth in trouble."); In re R.D., 154 Vt. 173, 176 (1990) ("The juvenile justice system serves rehabilitative rather than punitive goals."); In re J.S., 140 Vt. 458, 467 (1981) ("[A] court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State.") (citing Smith v. Daily Mail Publishing Co., 443 U.S. 97, 107 (Rehnquist, J., concurring); In re Certain Juvenile, 129 Vt. 185, 191 (1970) ("The very procedure governing treatment of such juveniles is the care, needs and protection of the minor and his rehabilitation and restoration to useful citizenship.").

[64] According to the most recent available census data, the unemployment rate for 16-19-year-olds in Vermont was 13.5%, almost twice the rate of those 20-24 years old (7.2%) and more than three times the rate of those age 25 and over (ranging from 1.4% to 3.7%). U.S. Census Bureau. (2017). 2017 American Community Survey 1-Year Estimates: Vermont Employment. According to 2016-2017 data, only 38% of 18- and 19-year-olds in Vermont were employed. U.S. Census Bureau. (2017). 2017 American Community Survey 1-Year Estimates: Vermont Employment.

[65] National Council of Juvenile and Family Court Judges. (2018, p. 1). Resolution Addressing Fines, Fees, and Costs in Juvenile Courts. Retrieved from https://www.ncjfcj.org/sites/default/files/FinesFeesCosts_Resolution_FNL_3-17-18.pdf. ("[I]mpoverished youth and families may face harsher consequences than their affluent peers because of their inability to pay"). The Justice Lab was unable to obtain data from Vermont regarding emerging adults' rate of payment of fines. National Council of Juvenile and Family Court Judges. (2018, p. 1). Resolution Addressing Fines, Fees, and Costs in Juvenile Courts. Retrieved from https://www.ncjfcj.org/sites/default/files/FinesFeesCosts_Resolution_FNL_3-17-18.pdf. ("[T]he failure to pay can result in serious and long-term consequences for youth and families including further penetration into the juvenile justice system, increased recidivism, difficulty engaging in education and employment opportunities, civil judgments resulting in wage garnishments, exacerbation of existing racial and ethnic disparities and increased financial burdens for impoverished families, all for reasons unrelated to public safety and counterproductive to the rehabilitative aims of the juvenile court").

- Financial penalties for youth may increase recidivism.[66]
- The national trend is away from financial penalties for juveniles.[67]
- Fines are especially burdensome when considering the many other costs that the delinquency system imposes on young people.[68]

Other Findings Related to Non-Custodial Dispositions

The post-merits options in the Family Division are somewhat limited, and there appears to be an overreliance on probation. The caseload analyses conducted in preparation for this report suggest that the Family Division can (and will be able to) appropriately increase its use of direct referrals to community providers and custody to a significant adult. However, neither community providers nor DCF probation have short, rapid-response programming. In turn, DCF probation supervises all of the youth on its caseload to the fullest possible extent. Data regarding the youth on DCF probation suggests that delinquent youth may also be subject to DCF supervision for counter-productively lengthy terms.[69]

Non-Custodial Post-Merits Options Recommendations

Brief Description of Recommendation	Benchmarks/Milestones	Who is responsible
Do not apply fines in Vermont's Family Division.	Immediate	All

[66] Financial penalties imposed on court-involved young people can actually increase recidivism. A 2016 study by Alex Piquero and Wesley Jennings found that owing costs (and/or restitution) upon case closing was significantly related to recidivism, as was the amount of the costs. Piquero, A. R., & Jennings, W. G. (2015). Research note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders. Youth Violence and Juvenile Justice, 15(3), 324–340. doi:10.1177/1541204016669213.

[67] In 2017 California passed SB-190, which eliminated almost all juvenile court fines and fees. S.B.190, 2016-2017 Leg., Reg. Sess. (Cal. 2017). On May 24, 2019, Nevada passed a law abolishing juvenile fees, including attorney's fees, fees for drug and mental health treatment, and detention fees, among others. A.B. 439, 2019 Leg., 80th Reg. Sess. (Nev. 2019). In 2015, Washington state passed the YEAR Act, eliminating most juvenile fines and fees, maintaining restitution but tying it to ability-to-pay, and allowing record sealing prior to full payment. S.B. 5564, 64th Leg., 2015 Reg. Sess. (Wash. 2015). In 2018, the National Council of Juvenile and Family Court Judges (NCJFCJ) released a resolution encouraging judges to "work towards reducing and eliminating fines, fees, and costs by considering a youth and their family's ability to pay prior to imposing such financial obligations." National Council of Juvenile and Family Court Judges. (2018). Resolution Addressing Fines, Fees, and Costs in Juvenile Courts. (Emphasis added). Retrieved from https://www.ncjfcj.org/sites/default/files/FinesFeesCosts_Resolution_FNL_3-17-18.pdf.

[68] For example, participation in CJC pre-charge diversion programming comes at a $100 fee for youth, which can be reduced. Members of the Vermont Juvenile Justice Stakeholders group expressed concern that information regarding the possibility of reducing the pre-charge diversion fee is not always relayed to the youth. In addition, there are fees associated with participation in Court Diversion that can be reduced but not waived. 3 V.S.A. §163(c)(9). Practitioners stated that these fees are set according to a sliding scale, based on the participant's ability to pay.

[69] DCF's length of probation data does not separate juvenile delinquency and YO cases, so the actual lengths of probation for delinquent youth is not entirely evident.

Expand immediate, short-term, targeted and discrete options (could be in lieu of formal probation, when appropriate), including e-courses, that can be used by CJC, BARJ, Court Diversion, direct-referral programs (post disposition), and probation, and encourage their use.	Identify curricula: 3.30.20 Modify curricula and prepare implementation strategy: 5.30.20	DCF; DOC/AGO possible
Increase direct referral; post-adjudication/pre-DCF supervision by the court to community-based restorative justice providers.	Strategy: 5.1.20 Implementation 7.1.20	Judiciary, DCF (BARJ) and DOC (CJCs)
End the routine use of probation in delinquency cases post-merits, looking to other states for examples.	Identify and analyze options from other states: 1.15.20 If feasible, pursue for 7.1.20	Stakeholder Group
Explore and create new probation structures that limit intensive supervisory role when appropriate, such as administrative probation.	Pilot initiated by 12.31.20	DCF with input from stakeholders
Shorten lengths of probation so they are proportional to the offense; specifically set a maximum time of supervision of 12 months for a felony and a maximum time of supervision of 6 months for a misdemeanor. Incentivize compliance with conditions of probation by reducing lengths of probation when a youth is compliant for a given amount of time. (For example, one month of compliance reduces supervision by one week or 15 days.)	7.1.20	Judiciary and DCF in lead, all stakeholders involved.
Use Positive Youth Development Model (see Appendix C) – Engage youth throughout the life of their case, concrete conditions of probation that are age appropriate, incentive-driven, and take into account the important positive relationships (outside of traditional family).	Education and training: on-going Modify approaches to supervision: immediate and on-going.	All stakeholders DCF and others as needed or identified.

Part VI: Physical Custody

Currently in the delinquency system, judges from the Family Division may order youths who have allegedly committed an offense before the 18th birthday to the custody of the Department for Children and Families. This can happen at three different stages of the system: (1) while a delinquency case is pending (commonly referred to as "pre-trial detention" in other states); (2) as part of the disposition of the case (once merits have been found and a judge accepts DCF's recommendation that it take custody); and/or (3) when a youth has violated the terms of probation and DCF detains the youth. Under each of these circumstances, DCF considers this transfer of custody for under 18-year-olds as legal custody, meaning that DCF acts as the parent or legal guardian and makes decisions around placement, care, and treatment. Data show that orders of custody to DCF that result in hardware secure placement have been used in very limited circumstances.[70]

When Act 201 is fully implemented, 18- and 19-year-olds who are charged with non-Big 12 offenses will also be processed in the Family Division and there will be occasions when judges will order custody to DCF (which could result in either non-secure or secure placement) under the same three circumstances as described above for the under 18-year-olds. This raises a few important issues for DCF.

First, youth reach the age of majority on their 18th birthday in Vermont, meaning that they retain the legal right to make decisions about their lives, including choices about their medical care, education, and where they live. The statute therefore needs to clearly establish that when the case involves a youth over the age of majority, the court will grant DCF *physical* custody, rather than legal custody. This is the type of custody granted in many other states (and, in states like Massachusetts, even for youth under age 18) and is the type granted to the Department of Corrections when a person is ordered to its custody (at any age).

Second, DCF will need to consider where it will place these youth, including whether to place them in a secure or non-secure setting. Currently, DCF utilizes a full range of residential placements with a variety of levels of supervision and treatment. This includes Woodside, a hardware secure treatment facility which, per Vermont statute, only admits youth under the age of 18.[71] Any statutory limitations on placement and custody will need to be examined and amended for the implementation of Act 201. In the meantime, DCF is considering the best placement and treatment options for *all* youth in its custody (legal or physical) in the child welfare and delinquency system, and the Department will continue to work on a statewide plan.

The Department of Corrections currently holds very few 18- and 19-year-olds in its custody. The chart below shows the "Point-in-Time" number of 18- and 19-year-olds incarcerated in DOC facilities on October 28th, 2019.

[70] Vt. Legis. Agency of Human Services & Dep't for Children & Families, Woodside Juvenile Rehabilitation Center Report. (2019).
[71] 33 V.S.A. § 5801.

Age	Total	Non-big 12	Big-12	Detained	Sentenced
18	2	1	1	1 non-big 12	1 big 12
19	9	5	4	1 non big-12; 4 Big 12	4 non-big 12

Table 12. Number of 18- and 19-Year-Olds in DOC Custody, October 28, 2019. Retrieved by Karen Vastine from the Vermont Department of Corrections.

It is important for Vermont to track this population going forward, so DCF will have more information for its planning process.

Ultimately, DCF aims to operate a continuum of care for residential treatment/out-of-home placements for *all* youth in the delinquency system (including those in custody for alleged lawbreaking as 18- and 19-year-olds when the Raise the Age law is fully implemented) that considers the need to appropriately care for youth and to keep the community safe. DCF recognizes the benefits of utilizing an array of venues that allow greater flexibility in placing youth to consider important criteria such as specific needs/programing, geographic location (to be near families), gender, age/developmental stage, education needs, and others.

Physical Custody Recommendations

Brief Description of Recommendation	Benchmarks/ Milestones	Who is responsible
Clarify/adjust statute(s) to reflect that 18- and 19-year-olds are in the juvenile justice system and that if DCF has custody over them, it is "physical" (not "legal") custody.	7.1.2020	Legislature, with input from the Stakeholders Group
Continue to analyze best placement and treatment options for *all* youth in DCF custody (legal or physical) in the delinquency system.	On-going	DCF

Part VII: Victims' Rights

Background on Victims' Rights

Victims of crime should be afforded their rights and opportunities regardless of the type of case proceeding (i.e. criminal or delinquency) used to address the young person's behavior. Vermont has a comprehensive statutory scheme that provides victims of crime with notice, an opportunity to be heard, and support in all cases in the Family and Criminal Divisions. While some variations exist in the rights that are legally offered in each type of case, these variations are generally consistent with the overall purpose of each system (e.g. the rehabilitative focus in the juvenile system), and in some cases victims are, by statute, afforded greater rights in the juvenile system. Based on preliminary discussions with stakeholders in Vermont, it appears some of the

differences and similarities in the existing statutory provisions are currently either unclear or inconsistently implemented, which can result in disparities for victims in the kinds of notice or support they receive in different kinds of cases. Minor clarifications, slight changes to practice, and a more robust implementation of the existing laws would help to ensure smooth implementation when the age of juvenile jurisdiction is raised to include those who are accused of lawbreaking as 18- and 19-year-olds in the juvenile system.

Current State of Victims' Rights

Vermont law provides for three types of case processing for youth who break the law: (1) the adult Criminal Division (for Big 12 offenses), (2) youthful offender proceedings, a hybrid system that combines elements of delinquency and criminal processes,[72] and (3) delinquency matters heard in the Family Division, for acts designated crimes under the laws of the State when they are committed by a child[73]. In all three kinds of cases, when there is an identifiable victim, victims in Vermont are legally entitled to victim assistance services, notice about the proceedings, and some level of participation in the proceedings, although the specific nature of these provisions varies legally and in practice.

Eligibility for Victims Assistance Program (VAP)

Crime victims[74] in Vermont are primarily provided with notice, case information, and support through an assigned victim advocate provided through the Victim Assistance Program (VAP).[75] A victim advocate is assigned to the case when the State's Attorney or Attorney General files charges. The advocate is tasked with informing victims of their rights and about case procedure, assisting victims in advocating for themselves, and notifying victims regarding court scheduling and other case milestones.[76] Victim advocates also provide an array of services that include "counseling and support," referrals for services, assistance in preparing documents, aid in obtaining protection through local law enforcement, and transportation to court as needed.[77]

Notice and Presence During Pendency of Case

Ensuring the protection of the accused's confidentiality is a hallmark of delinquency case processing.[78] Accordingly, delinquency proceedings are closed to the public and even victims are

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[72] See 33 V.S.A. §§ 5280-8.

[73] 33 V.S.A. § 5102.

[74] A "victim," by statute, is defined as any "person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of ***a crime or act of delinquency*** and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim." 13 V.S.A. § 5301(4) (emphasis added). Thus, victims in delinquency and criminal cases are legally entitled to VAP services.

[75] Since 1986, Vermont's statutory law has required State's Attorneys offices to operate a VAP through the Center for Crime Victim Services. 13 V.S.A. § 5304. The VAP also offers "Statewide Victim Advocates and Special Unit Victim Advocates." Vermont Victim Assistance Program (n.d.). Retrieved from http://www.ccvs.vermont.gov/support-for-victims/victim-assistance-program.

[76] 13 V.S.A. § 5304.

[77] 13 V.S.A. § 5304.

[78] The Family Division prioritizes the confidentiality of the accused young person and is concerned with protecting her or his rights. See, 33 V.S.A. §§ 5101, 5110, 5117; see also In re J.S., 438 A. 2d 1125, 1129 (1981) (stating as dicta, "Confidential proceedings protect the delinquent from the stigma of conduct which may be outgrown and avoids the possibility that the adult is penalized for what he used to be, or worse yet, the possibility that the stigma becomes self-perpetuating, thereby making change and growth impossible."); See also Smith v. Daily Mail Pub. Co., 443 U.S. 97, 107 (1979) (J. Rehnquist, concurring) ("This insistence on confidentiality is born of a tender concern

generally not able to be present in court prior to the disposition phase.[79] This protection of young people against the lifelong consequences that can result from the stigma and shame that accompany public hearings is itself among the reasons for expanding the age of juvenile jurisdiction.

Meanwhile, criminal cases are intentionally made open to the public to ensure that people are able to hold the courts accountable.[80] Thus, victims in criminal cases may be present at all court proceedings.[81] YO procedure was created to strike a balance between these priorities—as such, in YO cases, all but the public safety portion of the proceedings are closed to the public,[82] but they are open to the victim.[83]

For this reason, in criminal cases, victim advocates notify victims "when a court proceeding involving their case is scheduled to take place and when a court proceeding to which they have been summoned will not take place as scheduled."[84] In delinquency cases, victims do not have the right to receive from victim advocates such specific details regarding the dates and times of hearings.[85] Instead, the Juvenile Proceedings statutes require more vaguely that the "prosecutor's office" "keep the victim informed and consult with the victim through the delinquency proceedings" beginning before the filing of a delinquency petition.[86] This includes providing notification of the delinquency victim's rights and informing the victim about significant stages in case processing.[87] Further, for delinquency cases involving non-listed crimes (those relevant under the Raise the Age legislation), the victim has an enumerated right to notice from the prosecutor's office regarding when the dispositional court proceeding is scheduled and when it will not take place as scheduled.[88]

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for the welfare of the child, to hide his youthful errors and 'bury them in the graveyard of the forgotten past.'") (Internal citation omitted).

[79] 33 V.S.A. § 5110.

[80] *State v. Mecier*, 488 A.2d 737, 744 (1984) ("The public trial guaranty exists primarily to prevent the [criminal] courts from becoming 'instruments of persecution.' Public opinion has been thought to be 'an effective restraint on possible abuse of judicial power.' Other reasons for holding trials in public also exist. Witnesses are encouraged to be more truthful, and other people with relevant information, as yet unknown to the parties, may become aware of the proceedings and make themselves available to testify. Additionally, the openness of trials allows spectators to learn about the operation of the judicial system and acquire confidence in its remedies." (Internal citations omitted)).

[81] See 13 V.S.A. § 5309 (regarding victims of listed crimes).

[82] 33 V.S.A. § 5283(c)(2) ("For individuals who had attained 18 years of age but not 22 years of age at the time the act is alleged to have been committed, hearings under 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.")

[83] 33 V.S.A. § 5288(a)(2) ("The victim in a proceeding involving a youthful offender shall have the following rights: . . . to be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence [Exclusion of Witnesses] and to express reasonably his or her views concerning the offense and the youth[.]").

[84] 13 V.S.A. § 5304(a)(2).

[85] 13 V.S.A. § 5304(a)(2). This is the one explicit exception in the application of the VAP to delinquency cases. It is unclear from the plain language of the statute whether this exception also applies to the following sentence, which requires victim advocates to notify victims "as to the final disposition of the case, and . . . of their right to request notification of a person's release or escape." Id.

[86] 33 V.S.A. §§ 5234, 5234a.

[87] 33 V.S.A. §§ 5234, 5234a.

[88] 33 V.S.A. § 5234a(a)(1)(D).When the case involves a listed crime, the victim has a right to be informed by the prosecutor's office "when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled." 33 V.S.A. § 5234(a)(1)(C).

Because victims can appear at more stages in a criminal hearing and criminal sessions are held open, the law provides more detail regarding the right to notice of court dates and location. Juvenile sessions are closed, and therefore the statutes more broadly and vaguely outline delinquency victims' rights to notification. Still, delinquency victims can and should remain informed by the prosecutor's office as to significant stages and timelines in their case's development, without jeopardizing the accused's right to confidentiality.

Victim Involvement in Restorative Processes

While in criminal cases the restorative justice process is available only in some cases and at specified points in the case trajectory, in the Family Division a referral to the Balanced and Restorative Justice (BARJ) program can occur at any point in any delinquency case. There is a continuum of victim involvement in restorative justice programming ranging from having a proxy represent their view, to writing a letter, to in-person participation in a restorative process (such as restorative group conferencing or a circle process). When BARJ programming involves the restorative process, the BARJ staff can contact the victim to engage them. Even if the victim chooses not to participate in the BARJ restorative process, they can share the statement of impact with BARJ. By offering more opportunities for restorative justice practices in more case types, the Family Division provides greater opportunities to meaningfully incorporate victims in case outcomes.

Post-Disposition Support and Services

The work of victim advocates assigned through the States Attorneys' offices ends at disposition, or in the criminal setting, after sentencing. In criminal cases, the Department of Corrections has 2-3 Victim Services Specialists (VSS) to provide support, information, and connection to services for victims of people in DOC custody or under the supervision of the Department.[89] The VSS also coordinate resources, conduct release planning (1-on-1 with the victim), coordinate and ensure the safety and legality of any contact between the victim and the person who harmed them.[90]

In criminal cases that result in a term of probation, victims are allowed to be informed of most of the conditions of probation, and certainly those that relate specifically to the victim. However, the VSS is not allowed to disclose that the person in their charge is being treated/required to participate in programming for mental health needs or substance abuse issues.[91] Instead, the VSS can speak more vaguely, giving the victim an idea of the various types of issues that the Department of Probation addresses through programming by saying things like: "The offender is required to participate in programming. I will provide you with some examples of issues that would result in programming as a condition." The VSS then can list some broad categories of examples.[92]

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[89] The 2-3 Victim Services Specialists at the DOC are each assigned a region. They are overseen by one manager. Zeliger, L. & Dorr, J. (2019, July 19). Personal Communication.
[90] Zeliger, L. & Dorr, J. (2019, July 19). Personal Communication.; Vermont Department of Corrections. (n.d.). List of Services. Retrieved from https://doc.vermont.gov/victim-services/the-victim-services-program-of-the-vermont-department-of-corrections/victim-services-program.
[91] Zeliger, L. & Dorr, J. (2019, July 19). Personal Communication.
[92] Zeliger, L. & Dorr, J. (2019, July 19). Personal Communication.

There is no bar on DCF similarly providing victims with broad overviews of what may be happening in their case post-disposition. Also, as in criminal cases, victims in delinquency cases have a right to be informed of "any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household."[93] It is the role of the Victim Advocate through the States Attorney's office to inform the victim of these conditions. However, because DCF (which oversees delinquency confinement and probation) does not have a role similar to that of the VSS at DOC, no one is specifically tasked with receiving notice from victims if conditions of probation related to them have been violated, and ensuring ongoing support for victims after the dispositional phase.

Notice of Release from Custody

Victims are entitled to receive notice, if they request it, when the person who caused them harm is to be released from a residential facility back into the community.[94] In delinquency matters, this notice is limited to "listed" cases (please note that this is one of the unique places where Title 33 differentiates between 'listed' and 'non-listed' cases) when the youth is discharged from a secure or staff-secured residential facility. In these delinquency cases, it is prosecutors who are required to inform victims of this right,[95] and, if notice is requested, the notice is required to be given by the agency that has custody of the young person in question prior to their release (i.e. the Department for Children and Families).[96] It appears that there is no known process or timeline for informing DCF that the victim would like to be notified of such release.

Restitution

Like in criminal cases, restitution to the victim is to be considered "in every case in which a victim of a delinquent act has suffered a material loss" that is the direct result of the lawbreaking, meaning "uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses."[97]As mentioned above, the victim in all cases has the right to

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[93] 33 V.S.A. § 5234a(a)(2).

[94] 13 V.S.A. § 5305(a); 33 V.S.A § 5288(a)(3), (5); 33 V.S.A. § 5234(a)(4).

[95] According to the Victim Assistance Program statute, victim advocates are required to inform victims of this right to request notification from the agency, helping to secure this right for victims in criminal cases. 13 V.S.A. § 5304(a)(2). Based on conversations with victim advocates from around the states and an analysis of their victim notification forms, it appears that victims are provided the opportunity to make this request for notice.

[96] 33 V.S.A. § 5234(a)(4). The agency's inability to give notification to a victim does not preclude release, but in that case the agency must "take reasonable steps" to give notification of the release soon after. 33 V.S.A. § 5234(a)(4) (also defining "reasonable" notification efforts). In youthful offender cases, victims can similarly, "request notification by the agency having custody of the youth before the youth is released from a residential facility," and the prosecutor is assigned the role of notifying the YO victim of this right to notification. 33 V.S.A. § 5288(a)(3), (5). Because the legislation says that youth 18 and over cannot be placed at Woodside, this notice regarding emerging adults in custody may fall in the hands of DOC post-RTA absent statutory changes to move those youth into DCF custody. 33 V.S.A. § 5801(d). See also Emerging Adult Justice Project, Justice Lab, Columbia University. (Forthcoming). Memorandum on Secure Confinement.

In delinquency cases, victims can also be provided the child's name and any conditions of release (or conditions of probation), but only if the conditions "are related to the victim or a member of the victim's family or current household," which apparently applies to both detention and placement. 33 V.S.A. §§ 5234, 5234a. The name of the facility is not to be disclosed to the victim. 33 V.S.A. § 5234(a)(4). The Justice Lab learned that some victim advocates request conditions of release related to the victim so the victim can learn the defendant's name. K. Woodward. (2019, October 3). Personal Communication.

[97] 33 V.S.A. § 5235(a); see also 13 V.S.A. § 7043(a)(1).

provide a statement to request restitution. Restitution in both delinquency and criminal cases may include return of property taken, monetary payments made to the Restitution Unit, and payments "in kind" that the victim finds acceptable.[98]

In criminal cases and juvenile cases where the adjudicated youth has reached 18 years of age, the Restitution Unit (RU) within the Center for Crime Victim Services is responsible for tasks such as collection and enforcement.[99] This is the primary difference between restitution in the juvenile and criminal settings in Vermont, but will not be affected by the implementation of the Raise the Age legislation, because it only impacts those age 18 or older. In certain criminal and delinquency cases involving individual victims (not businesses), the RU can advance the victim's restitution from the Crime Victims' Restitution Special Fund.[100]

Payment from the Victims Compensation Fund

In addition to restitution, victims in both delinquency and criminal cases may be eligible for payment from the Victims Compensation Fund by application to the Victims Compensation Board.[101] If there is concern that the application for payment from the Victims Compensation Fund requires submission of documents that may be considered confidential, the victim (or the victim advocate on their behalf) may ask the court for an order allowing Victim Compensation to inspect such records or files.[102]

Victims' Rights Findings

Eligibility for Victims Assistance Program (VAP)

While the VAP law expressly applies to all victims of crime and delinquency, VAP is embedded in the criminal procedure law and there is no express adoption of its provisions in the Juvenile Proceedings statutes that outline the rights of victims in delinquency and YO cases. Such express incorporation is not necessary, and it appears from conversations with stakeholders in Vermont that victim advocates are assigned in at least some delinquency matters in at least some jurisdictions. If any victims in delinquency cases are not assigned victim advocates, they are likely to be under-supported and under-informed regarding resources available to them, court procedure, the opportunity to provide a victim impact statement, requests for restitution, and requests to receive notice of release. These rights can be vital to victims' sense of procedural justice and their ability to heal from the pain caused by the law-breaking behavior. It is important to ensure the full implementation of the VAP law in all jurisdictions so that victims are afforded advocates in all cases in which they are legally entitled.

Post-Disposition Support and Services

It is important to ensure that DCF is fully affording victims their right to notice after disposition and continuing to support victims as DOC would if the victim's case had gone through the Criminal Division.

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[98] 33 V.S.A. § 5235(b); 13 V.S.A. § 7043(b)(1). According to conversations with practitioners, it seems that at least in some jurisdictions, the outcome is never such in-kind restitution.
[99] 13 V.S.A. § 5362; 33 V.S.A. § 5235(k)(1)-(2).
[100] 13 V.S.A. § 5363 (see subsection (d) for criteria).
[101] 13 V.S.A. §§ 5351(3), 5359.
[102] 33 V.S.A. § 5117(b)(F).

While the role of the VSS does not currently exist within Vermont's delinquency framework, similar work is conducted by DCF's Domestic Violence Unit. The Unit is comprised of a Director and four Domestic Violence Specialists (DVS) – each is "based in one office in an assigned region and covers additional district offices. The Director covers the remaining areas of the state. DV Unit staff members are available by phone or email during regular state office business hours (7:45 AM- 4:30 PM)."[103] Among the provisions of the Unit are: advocacy and support services to adult and child victims of domestic violence, case-specific recommendations, ongoing consultation, and follow-up as needed, and specialized training and professional development to DCF staff and community service providers. While the DVS role would not extend beyond dating and sexual violence in the delinquency context, DVS are DCF staff with a deep knowledge of the needs of victims and the services available. DVS is best positioned to guide the creation of the VVS role at DCF and the enhancement of services for victims post-disposition.

Notice of Release from Custody

In current policy, when DCF receives notice that the victim would like to be informed of release, the DCF Family Services Worker and supervisor mail a form letter to victims in listed cases who request such notice prior to release. However, discussions with juvenile justice system stakeholders in Vermont (including DCF, victim advocates, and States Attorneys) have led to the conclusion that in many cases, DCF is not informed that the victim would like to be notified and victims are not actually sent the notice.

When the age of juvenile jurisdiction is raised beyond the 18th birthday, many (if not most) of the cases of 18- and 19-year-olds involving listed crimes will remain in the Criminal Division, making the above provision inapplicable.[104] However, in those delinquency cases that involve confinement of the emerging adult in a DCF secure or staff-secure residential facility for listed offenses, victims have a right to and should receive notifications regarding the youth's release so that the victim can focus on working toward their recovery without worrying they may encounter the youth at any moment.

[103] Vermont Department of Health. (2016, February). Vermont Home Visitation Guide on Screening, Assessment & Response to Domestic Violence, 29. Retrieved from https://dcf.vermont.gov/sites/dcf/files/DCF/docs/HV-DV-VT-Guide.pdf.

[104] An act relating to adjudicating all teenagers in the Family Division except those charged with a serious violent felony, No. 201, §§ 7, 13, 15-9 (codified as 33 V.S.A. §§ 5201, 5203-04) (excluding the Big 12 offenses from the jurisdiction of the Family Division for 18- and 19-year-olds). As mentioned above, a large proportion of the approximately 550 expected cases that will be moved to the Family Division will be for lawbreaking that does not directly impact a victim, such as drug crimes, motor vehicle "other" crimes, and public order offenses. Judge A. Davenport. (2019, p. 2). Memorandum to Karen Vastine, "RE: FY 19 Data on Criminal Charges involving 18 and 19-Year-Olds." [Memorandum]. Retrieved from the Vermont Department of Children and Family Services. Of the cases that would make their way to the Family Division, these three categories of cases make up about 50.4% of cases closed for 18-year-olds, and approximately 51.9% of cases closed for 19-year-olds. Id. Also, the most serious cases, those that involve the greatest harm to victims (i.e. "Big 12" cases), will continue to be prosecuted in the adult Criminal Division when the age of juvenile jurisdiction is raised.

Restitution

The current legal scheme is structured such that when the upper age of juvenile jurisdiction is raised per Act 201, victims of 18- and 19-year-olds' lawbreaking should be afforded rights to restitution in the Family Division similar to those they would have been afforded were their cases heard in the Criminal Division. However, conversations with practitioners have revealed a widespread confusion about how restitution actually operates in delinquency cases, such that significant benefit would be gleaned from clarifying (and revising where necessary) the statutes and policies, and releasing an informational memo outlining the practice.

Communication Between Stakeholders

Research in preparation of this report revealed that many of the issues plaguing the administration of victim rights were caused by a lack of communication between the various system stakeholders (i.e. DCF, Victim Advocates, State's Attorneys, and the court). Creating and formalizing regular opportunities for local stakeholders to communicate is therefore likely to greatly improve the handling of victims' rights.

Victims' Rights Recommendations

Brief Description of Recommendation	Benchmarks/Milestones	Who is responsible
Clarify that victim advocates should be provided in all cases to provide support, information, consultation, and notification and ensure they are assigned in all cases.	7.1.20	State's Attorney Victim Advocates, DCF and Courts
Create consistency in forms used by victim advocates. Clarify the procedure for disseminating the Victim Impact Statement to all parties, and request for notice of release and the notice of victims' rights to the victim.	In progress	Victim Advocates with input from the court and DCF
Evaluate the process for requesting and receiving restitution in delinquency cases and release an informational memo to instruct practitioners on operations.	7.1.20	Victim Advocates/Center for Crime Victim Services
Formally create regular opportunities for DCF family services workers and victim advocates to meet and communicate.	1.31.20	DCF and Victim Advocates

Part VIII: Operational Plan for DCF

Background on Operational Plan for DCF

Incorporating 18- and 19-year-olds into the juvenile justice system will impact all of the system stakeholders, but particularly DCF because Family Services Workers are involved with cases at all phases of the juvenile justice system, from pre-merits in the Family Division through supervision and placement of youth adjudicated delinquent. Because DCF does not currently serve people who are ages 18 and 19 at the time of the alleged offense (unless they have received Youthful Offender status), the Department will need to absorb and serve this population in the most efficient and effective way.

DCF's Family Services Division (FSD) has a broad and diverse mandate, especially as compared to other states. FSD is responsible for child protection (which includes youth who are truant or meet the statutory definition of "unmanageable") and supervision of youth adjudicated delinquent. Thus, FSD must balance its resources, staffing patterns, hierarchy, and work-place culture to address both mandates.

The "opioid crisis" hit Vermont exceptionally hard, and as a result, the number of children coming into DCF custody has significantly increased, particularly children between the ages of 0 and 5.[105] When preparing for the absorption of the additional cases directed by Act 201, DCF needs to adjust its structure to prevent any negative impact on child protection or public safety.

To prepare this aspect of the operational plan, staff from the DCF Commissioner's Office (CO) and leadership within FSD's central office worked in close partnership to explore potential structural modifications and how those would help meet the needs of the youth served while maintaining a clear, cogent structure. This group took the following steps:

1. A day-and-a-half planning meeting of CO and FSD senior leadership from central office co-facilitated by the Senior Advisor to the Commissioner and Justice Lab staff
2. Several design meetings with FSD central office and CO staff
3. Presentation and discussion of the proposed structure to the FSD Management Team
4. Presentation to the District Directors via a web-based platform, led by DCF's Director of Operations.
5. Presentation and discussion of the proposed structure with District Office directors and supervisors, central office-based senior management of FSD, CO, and the Justice Lab.

Current State

The Family Service Division of DCF fully embraces and practices the values and principles of social work. These values undergird the culture of the entire division, drive the tone and tenor of its policies, and ground its practice, supervision, and training. Social work values are inextricably linked to the division and staff member identity and most staff are social workers by education.

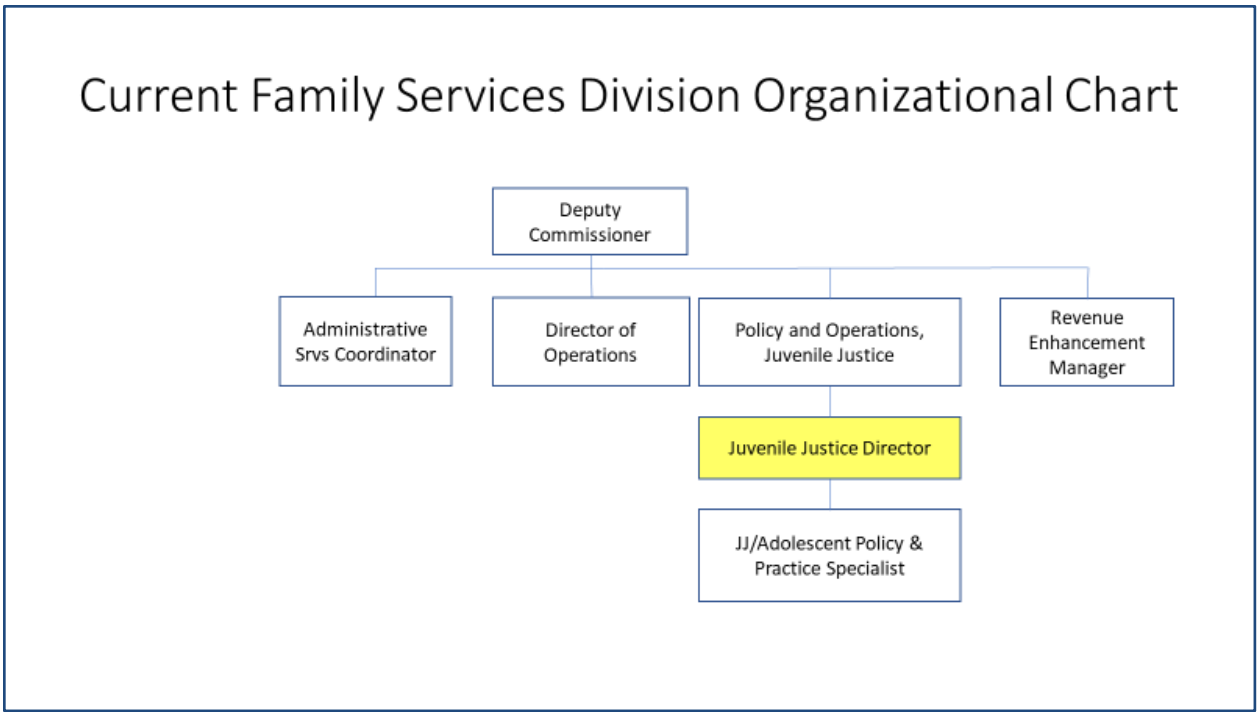
[105] Vermont Department of Children and Families. (2019, p. 23). *Annual Report on Outcomes for Vermonters.* Retrieved from https://dcf.vermont.gov/sites/dcf/files/DCF/reports/DCF-Outcomes.pdf. From 2013 to 2018, the number of children in DCF custody increased from 982 to 1301. While youth age 12-18 in DCF custody decreased during that period, the number of youth ages 0-5 increased from 284 to 485.

FSD staff serve the entire family system and view the youth as part of the family dynamic. It is through this lens that the Division considers its dual mandate of child protection and juvenile delinquency. Furthermore, consideration of the whole family system is one of the many important aspects of FSD's supervision of youth adjudicated delinquent that is developmentally appropriate for 18- and 19-year-olds. FSD recognizes that youth who come through the system as delinquent, truant, or "unmanageable" (herein referred to as 'at-risk youth') often have similar histories and needs as those youth on the child protection caseload. Therefore, the social work approach to all cases has always been held as a vital part of the whole division.

As the entity responsible for child welfare for Vermont, FSD's workload is largely driven by the overall health of Vermont. The negative consequences of the opioid crisis, which is considered a public health crisis, has significantly impacted the ability of many of Vermont's parents to safely parent and nurture their children. Since 2014, there has been a steady and significant increase in the number of children in the care of the State. This has impacted FSD operations, especially its direction of its resources, towards the child protection caseload. The current FSD structure reflects its caseload distribution, which, particularly until 2018/19, has been much more heavily weighted toward child protection.

There are three district offices with units that focus primarily on delinquency and at-risk youth cases: Rutland, Burlington, and Barre. All other district offices have a staff designated to handle the juvenile and at-risk youth caseload, but they are also assigned child protection cases. Within the district offices, the supervisors and district directors supervise and support staff on matters related to both sets of caseload pressures.

In Central Office, there is one person within FSD in a leadership role dedicated to juvenile justice, at-risk youth, and adolescents. That position exists within the Policy, Program and Planning Unit and reports to the director of that unit. Currently, there is no person reporting directly to the Deputy Commissioner of FSD on juvenile justice. See the current organizational chart below.



With the expansion of the Youthful Offender (YO) status starting on July 1, 2018, FSD staff who handle delinquency and YO cases have experienced significant pressures on their workload. The number of Youthful Offender filings increased from 33 in FY18 to 504 in FY19. While the total number of cases afforded YO status was 94 (with more than 150 still pending), DCF staff in some way worked on nearly all of the 504 cases being considered for YO. This pressure provided the Division a heightened expertise and level of specialization that will help it grow when Act 201 goes into effect, though next year's inclusion of 18-year-olds is not likely to as suddenly or significantly increase DCF's caseload.

Findings Related to Operational Plan for DCF

The Family Services Division considered a number of options for adjusting its infrastructure to absorb 18- and 19-year-olds into its caseload. This included creating a separate division within DCF for juvenile justice and at-risk youth. After careful consideration, central office leadership ultimately agreed that maintaining one division that handles both delinquency and child protection case types, although more complicated, is the best option for maintaining consistency in practice and strong teamwork among the staff.

The following observations informed the design process:

- The caseloads of staff handling juvenile justice and at-risk youth are high, ranging from 25-45 cases per staff.
- As noted in this report's section entitled, 'Diversion: Increasing opportunities to divert cases from formal justice processing', FSD funds and closely collaborates with BARJ programs in the community. BARJ provides pre-charge and post-charge services: restorative justice processes (which include victim outreach and involvement); case management; YASI screenings; skill-building; after-school programming; and support for school attendance and successful completion of probation. Any increase to the FSD

caseload has a commensurate impact on BARJ as the cases are shared, including those that require a YASI screening ahead of formal court involvement.

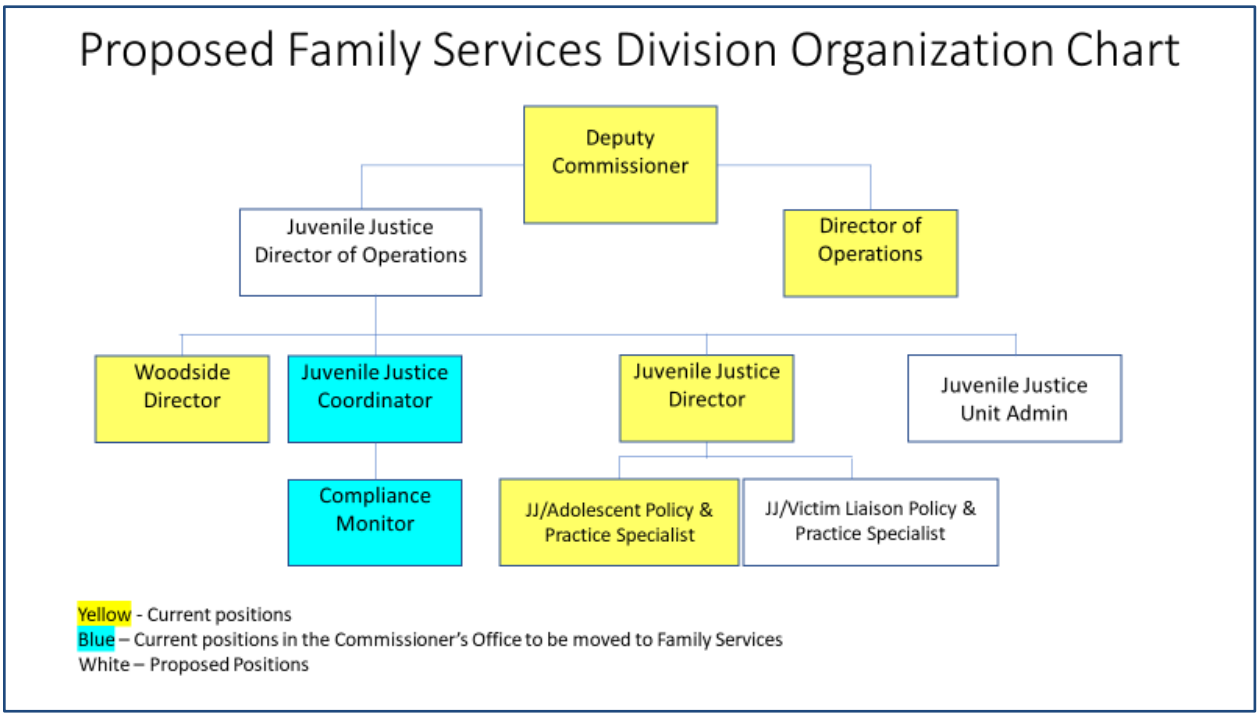
- Questions were posed regarding design and implementation of a structure that would ensure expertise and specialization but would not disrupt the reporting and supervision chain. Currently, Family Services Workers in district offices report to their local supervisors; local supervisors report to a district director; district directors report to their assigned operations manager at central office.
- One central office position, the Juvenile Justice and Adolescent Unit Director (Juvenile Justice Director), is focused exclusively on juvenile justice and at-risk youth practice, internal policy, community partner grants, and technical assistance needed on complex cases in the various districts is currently insufficient.
- Deputy Commissioner Christine Johnson prioritizes having adequate senior leadership staff to support juvenile justice practice, system oversight, and a senior leadership position that reports directly to her.
- There is a recognition of a need to expand DCF's capacity to ensure that victims in delinquency cases are fully afforded their rights. The Domestic and Sexual Violence Unit provides consultation to FSD staff on all cases involving domestic or sexual violence.
- Victim advocates (outside of DCF) and DCF staff stated a need for additional capacity to support victims in other case types and to interface with victim advocates, victims, and other appropriate entities (such as schools).
- Through appropriations in several recent legislative initiatives, FSD received additional staff to offset the increases in child protection to help ensure that caseload ratios were closer to the statutory mandate. This has helped alleviate the pressures on FSD.
- FSD does not currently have training curricula focused on Positive Youth Development (PYD; see Appendix C) as it pertains to emerging adults, or youth age 18 and older. Expertise on PYD is also not included in the supervisory structure, and it will therefore need to be cultivated and maintained.
- The Juvenile Justice Coordinator, the staff person who manages the Children and Families Council for Prevention Programs (the State Advisory Group for Juvenile Justice, Delinquency, and Primary Prevention) is currently positioned in the Commissioner's Office. The Coordinator's work helping the Council's development of a three-year plan that includes statewide juvenile justice policy and funding priorities, and monitoring programs funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), can support implementation of Act 201.

Operational Plan Recommendations

Clearly differentiate the direct casework, policy, training, and leadership structure within DCF between child protection and juvenile justice/at-risk youth.

After much discussion and analysis by the FSD central office team, with input from the district offices, it has been determined that creating a clear separation between these two types of caseloads will allow the Division to further its specialization and expertise in Positive Youth Development (PYD; see Appendix C) and developmentally appropriate strategies for supervising 18- and 19-year-olds.

<u>Phase 1 of RTA Implementation</u>: Address central office infrastructure by restructuring staff to grow the needed expertise and coordination of the division.
FSD first needs a leadership structure that reflects and supports juvenile justice specialization. The recommendation is to repurpose three positions and to move the Juvenile Justice Coordinator to FSD. This change will allow for cohesive direction and support for the district offices. In addition, the leadership positions will ensure DCF maintains the expertise and specialization needed to support direct service staff. See the proposed organizational chart below.



- **Juvenile Justice Director of Operations** – Responsible for system oversight of juvenile justice and services for at-risk youth for FSD. The Director will:
    - Coordinate ongoing juvenile justice reform efforts
    - Convene the Juvenile Justice Stakeholder group
    - Direct legislative and other external policy work
    - Supervise Juvenile Justice/Adolescent Director; Victim Liaison/Policy and Practice Specialist; and Juvenile Justice Coordinator
    - Problem solve regarding systemic issues related to juvenile justice and at-risk youth, including barriers to services
    - Interface with other divisions within DCF, and with other departments or agencies
    - Evaluate and support the system of care and address gaps as needed
    - Identify community service gaps
    - Provide quality assurance monitoring
    - Assist with budgetary management
    - Take on overarching responsibility for system-wide DCF policy and practice that it is effective and reflects quality assurance and best practice (ensuring appropriate length and intensity of intervention),

    - Support a high-quality workforce, by conducting staff recruitment, training, performance evaluation, and supervision specific to juvenile justice and at-risk youth expertise.

- **Victim Liaison/Policy and Practice Specialist** – Support policy, practice, and technical assistance related to victims of youth adjudicated delinquent. The Specialist will:
    - Manage victim notification
    - Prepare practice guidance for communication with state-based and community-based victim advocates
    - Draft and update relevant policies related to victim support and services
    - Provide technical assistance to Family Services Workers
    - Serve as a point of contact for courts, other state and community-based victim advocates, and other stakeholders, and
    - Engage with schools as needed to assist with safety planning.

- **Administrative Assistant** – Support the administrative functions of FSD's juvenile justice and at-risk youth work, including:
    - Data-entry
    - Tracking, and
    - Assistance with communication.

Phase 2 of RTA Implementation: Consider the needs of direct service staff.
FSD staff workloads will be further analyzed after July 1, 2020 and in the report due to the legislature on November 1, 2020. FSD will be better positioned to predict its workforce needs for the added population once the law goes into effect.

Increase resources allocated to community providers to support diversion from the system.

FSD will continue to rely on BARJ programs to support system-involved youth and to help meet the needs associated with the anticipated increase in cases. An increase to the BARJ contract would ensure they are able to meet those additional needs.

Brief Description of Recommendation	Benchmarks/ Milestones	Who is responsible
Explore and use collaboration, communication, and creative approaches among stakeholders, including incentivizing cooperative efforts between stakeholders to reduce youth in court or custody.	Pilot in 2020/21	DCF and stakeholders
Create the role of Victim Services Specialists at DCF to offer victims support, information, and connection to services post-disposition.	7.1.20	DCF

Impose, develop, and implement standards on Court Diversion programs to direct them to be shorter/more time-limited interventions. Develop and implement general program standards related to emerging adults for BARJ, CJCs and Court Diversion.	7.1.20 Ongoing	AGO, DOC and DCF with stakeholder input
When cases are unsuccessful in Court Diversion, allow the court to play a role before proceeding to prosecution.	Pilot 1.1.20	Judiciary, SAs, Diversion program/AGO
Update data systems and collect data to ensure outcomes of the statutory change are measured and evaluated.	Prioritize for 7.1.19 and will need to be ongoing	All

Part IX: Resources

The Raise the Age law will move a population of youth from the adult criminal justice system to the juvenile justice system to better serve youth and to improve public safety. Although 18- and 19-year-olds are currently being prosecuted, moving to the juvenile justice system will be more resource intensive, since the juvenile system generally provides more supervision and rehabilitative services than the adult justice system. But any increase in investment in youth will provide longer and greater cost savings in the future, because it reduces collateral consequences and thereby affords youths the opportunity to grow into responsible, productive and tax-paying citizens.

Though Vermont is the first state in the country to expand its juvenile jurisdiction to include those accused of lawbreaking as emerging adults, the predicted cost increases in states that raised the age in recent years to include older teens did not materialize.[106] Furthermore, those states experienced reductions in recidivism that contributed to long-term cost savings.[107] Some of the

[106] Justice Policy Institute. (2017, n. 187). Raising the Age: Shifting to a Safe and More Effective Juvenile Justice System, Washington, DC. Retrieved from http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf ("Fifteen of the 29 states that wrote fiscal notes finding a significant fiscal impact failed to estimate the impact beyond two years. Some effective criminal justice reforms, including certain drug and mental health treatment programs, require initial modest startup costs but reduce future prison spending significantly. Without an official recognition of the future savings, legislators are less likely to be aware of the long-term fiscal benefits of these reforms, reducing the chances of enactment.") (quoting Leachman, M., Chettiar, I. M., & Geare, B. (2012). *Improving Budget Analysis of State Criminal Justice Reforms: A Strategy for Better Outcomes and Saving Money.* Washington D.C.: American Civil Liberties Union & Center on Budget and Policy Priorities). For example, raising the age in Connecticut, Illinois, Massachusetts, New Hampshire did not cost nearly as much as predicted. (Justice Policy Institute, pp. 7-8).

[107] Justice Policy Institute. (2017, n. 215). *Raising the Age: Shifting to a Safe and More Effective Juvenile Justice System*, Washington, DC. Retrieved from http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf

savings associated with raising the age include those stemming from a reduction of future victimization (by reducing recidivism) and avoidance of trauma that youth would likely experience in the adult penal system.[108]

This report outlines many of the major resources that currently exist to more effectively serve emerging adults in the juvenile justice system and suggests targeted investments in programs, such as BARJ, that will divert more cases from the formal process, thereby keeping the juvenile caseloads at manageable and appropriate levels.

Part X: Act 201 Implementation: Ongoing data collection and analysis

Data collection and analysis are essential for assessing Raise the Age law implementation, and whether there are unanticipated concerns to address or successes to celebrate. Of particular importance will be analyzing data on race and ethnicity, since national data indicate that 18- and 19-year-old males have the highest racial disparities, and Black youth are 7 to 9 times more likely to end up in prison compared to their White peers.[109] Fortunately, much of the data needed to assess implementation are already being collected, albeit not always consistently or in an aggregated format that allows for a big-picture analysis. The following recommendations include both suggestions for data to be collected, as well as suggestions for how best to use existing data to evaluate the impact of the law and longer-term suggestions for improving data collection practices overall.

Compile a list of all data currently collected by various entities focused on youth in the juvenile justice system and assess which pieces of data are most critical to aggregate and review on a regular basis.

Currently, data regarding how youth travel through the system is collected by a wide variety of stakeholders and varies considerably in terms of coverage and reliability. At least some data on youth in the system is collected by the following entities: local police, Community Justice Centers, State's Attorneys, Court Diversion (and the Attorney General's office), the Family Division, and DCF (including DCF's BARJ providers). Some of this data is quite limited (e.g.

("Research shows that prosecuting youth as adults increases recidivism by as much as 34%.") (citing United States Department of Health and Human Services. (2007). Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services. *U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report 56*(RR-9). Retrieved from http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf.

[108] A study in New York predicted that by raising the age upper age of juvenile jurisdiction from 16 to 18, the state would experience $443.57 million lifetime savings, including avoided costs on criminal justice, crime victims, welfare, social support programs, public healthcare, and added tax revenue associated with education attainment and security in the workforce. Independent Democratic Conference of the New York State Senate. (2016, p. 13). The Price of Juvenile Justice: Why Raising the Age Makes Cents for New York. Retrieved from https://www.nysenate.gov/sites/default/files/idc_price_of_juvenile_justice_full_report.pdf.

[109] Carson, E.A., & Golinelli, D. (2014). Prisoners in 2012: Trends in Admissions and Releases, 1991-2012. U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics.

only a few of the CJCs track how many youths they serve or their offenses), other data is more detailed (e.g. DCF's information regarding youth screened with the YASI).

The following data is currently available and could potentially be included in such a report:

- Data on the total number of youths charged in the Family Division, by county, and the disposition of their cases. This data can be disaggregated to show delinquency, youthful offender, and Big 12 cases, including cases transferred to/from adult court. It is possible to disaggregate this data by age, gender, race/ethnicity, and offense type.
- Dispositions of youth cases charged in the Family Division, by county, including a break-down of the type of disposition (dismissal by Court/State, successful diversion, transfer, adjudication) and the number of cases that are adjudicated delinquent where diversion was attempted and failed. It is possible to disaggregate this data by age, gender, race/ethnicity, and offense type.
- Data on the total number of youths referred to Court Diversion, readily available by county
- Data on the average length of time to process a delinquency case in the Family Division
- Data on the total number of youths who are placed in the custody of DCF, by age, gender, and race/ethnicity. Data is also available on what placements (foster home, relative placement, intensive treatment, etc.) that these youth are in. Note that DCF does not currently have data on which youth are placed in custody prior to a delinquency finding.
- Data on the total number of youths referred to BARJ, available by county, including how many youth successfully complete BARJ, their reason for referral, and the number of restorative processes convened. Note that DCF recently began collecting data on youth were referred to BARJ prior to a charge being filed.
- Data on the total number of youths on probation supervised by DCF, including their length of time on probation (if on probation but not in DCF custody), age, gender, race/ethnicity, and offense type. Note that DCF does not currently have data on the number of youths on probation for the different categories of cases (e.g., delinquency and youthful offender).
- Data on the total number of youths held in non-secure, out-of-home placements at a particular point in time, as well as the age, gender, race/ethnicity, and home town of these youths
- Data on the total number of youths held in secure, out-of-home placements at a particular point in time, as well as the total number of admissions to the school at Woodside, the age, gender, race/ethnicity, and home town of these youths, and their educational progress during their time at Woodside
- Data on the risk/need profile of all youth who are given the YASI screen by DCF

The following data may be available but was not reviewed by the Justice Lab:

- Data on the total number of youths under 20 arrested in Vermont, by age, race, gender, and offense. (This data is reported annually to the FBI by most states and has been previously provided to the FBI by Vermont.)
- Data on the age, gender, race/ethnicity of youth, and offenses of youth served by BARJ
- Data on the age, gender, race/ethnicity, and offenses of youth served by Court Diversion
- Data on the age, gender, race/ethnicity and offenses of youth served by DCF's Probation program

Identify an entity to aggregate existing data and generate a summary report of relevant data no less than annually.

Consider designating the same entity as the convener for a formal stakeholder group that is charged with monitoring the impact of the law on an ongoing basis and reporting to the legislature on issues as they arise. Ideally, such a group would review both the basic case flow of how youth travel through the system (including the total number, ages, gender, race/ethnicity, and offense or risk profile of youth who are arrested, diverted pre-charge, charged in court, diverted post-charge, and adjudicated, including the type of disposition youth receive), as well as the needs of youth in the system (to permit appropriate programming and funding decisions), and the outcome of the system, both in terms of public safety and youth development.

Collectively identify any missing data that stakeholders believe are critical to allow Vermont to evaluate the impact and success of Raise the Age, assess the barriers to collecting or generating that data, and produce a brief to the legislature outlining what policy or funding changes are required to generate that data.

Vermont can most pragmatically and efficiently build upon its existing data systems by prioritizing the addition of data elements that stakeholders believe are most critical for evaluating implementation and long-term system improvement. Suggestions for potential data to consider making more readily available or to begin collecting are set forth below.

Data that is currently possible but cumbersome to retrieve, but which could potentially be more systematically collected:

- Data regarding the offense profiles, ages, gender, race/ethnicity, and risk (when possible), of youth who are involved in BARJ, along with outcomes according to those categories
- Educational, health, and other needs of youth in DCF custody and care. This data is part of youth's case records but is not readily available to be aggregated or assessed on a system-wide basis.
- Recidivism data for youth in the Family Division. The Vermont CRG has previously worked with DCF to match cohorts of youth to determine the recidivism or incarceration rate for youth in the system, but this capacity does not exist. Creating mechanisms within the Court's data system to evaluate how many youth return for multiple cases, or systematizing matching for youth who are processed in the Family Division, could allow for better evaluation of the outcomes for youth who participate in pre- or post-charge diversion or whose cases are dismissed, as well as youth who are placed in the custody of DCF.

Data which are not currently available, but which the Justice Lab recommends be added as soon as is feasible, include:

- The total number of youths diverted or referred to community-based restorative justice programs prior to being formally charged, by county and by age, gender, race/ethnicity, risk, and offense type. This data was available for at least one CJC providing services in Vermont but was unavailable for others.

- Risk/needs and outcome data for youth who are served by pre-charge diversion programs, Court Diversion, and DCF. For example, how many youths have substance abuse or special education needs? How many youths who have these needs receive services, and are these services successful? Research suggests that the best way to reduce recidivism and promote desistance among youth who engage in criminal activity is to focus on their developmental needs and improving their developmental outcomes. Unless the system is capable of measuring progress in these areas, it will be difficult to see where the gaps in services lie, limiting the potential effectiveness of interventions (See additional examples of youth developmental needs and outcomes below.)
- Data on the risk/need profile of all youth who are given the YASI screen by DCF, with their case outcomes, disaggregated by county, race, age, and gender

Examples of Youth Development Needs and Outcome Data
• Physical or behavioral health needs and outcomes (e.g. engaged in therapy, completed treatment, secured long-term healthcare provider) • Alcohol or substance abuse needs and outcomes (e.g. engaged in or completed treatment, maintained sobriety) • General and special education or disability status and educational outcomes (e.g. revised IEP, increased school engagement, advanced a grade level, graduated high school) • Vocational or occupational needs or outcomes (e.g. engaged in job training, secured job or promotion) • Permanency and/or housing status (e.g. parenting coaching received, guardianship with aunt, secured long-term housing) • Pro-social activities (e.g. engaged in sports or other pro-social activity, reports positive relationships with peers) • Time within which youth are able to access needed services • Evaluation of how access and timeliness of access varies by region or other factors • Public safety outcomes (e.g. number of youths rearrested or charged a second time)

Systemic barriers to collecting data were identified during the creation of this report.

Some of those systemic barriers to collecting data include:

1. No consistent mechanisms for agencies to share aggregate data with one another nor any central entity that is responsible for monitoring the functioning and effectiveness of the juvenile justice system as a whole.
2. Data and research capacity at Agency of Human Services (AHS) is siloed and outside the direct control of the agencies that are responsible for outcomes. For example, DCF researchers must work with a separate entity to incorporate changes to their own databases or databases that require collaboration with outside vendors (i.e. YASI). This appears to make it exceedingly difficult for managers or researchers within the agencies.
3. Inconsistent or absent systematic reporting by community providers who are contracted to provide restorative justice, CJCs, Court Diversion, BARJ and other services to DCF and other state entities. These providers are often the groups with the most direct contact

with youth and their families and potentially the most understanding of their underlying needs.

Act 201 Implementation: Ongoing data collection and analysis Recommendations

Brief Description of Recommendation	Benchmarks/ Milestones	Who is responsible
Identify an entity to aggregate existing data and generate a summary report of relevant data no less than annually.	Identify method for aggregating data: 6.1.20	Members of the Stakeholder group
Compile a list of all data currently collected by various entities focused on youth in the juvenile justice system and assess which pieces of data are most critical to aggregate and review on a regular basis.	Compile list by February 1, 2020 Assess with stakeholders by February 28, 2020	DCF compile with input from all stakeholders
Collectively identify any missing data that stakeholders believe are critical to allow Vermont to evaluate the impact and success of Raise the Age, assess the barriers to collecting or generating that data, and produce a brief to the legislature outlining what policy or funding changes are required to generate that data.	February 28, 2020	DCF with input from all stakeholders
Identify composition of outcome study and evaluation that takes into account the important markers for emerging adult desistance and reduced risk including: meaningful employment; education completion; stable housing; positive social connections. These, combined with recidivism rates for this population, will provide Vermont an assessment of the first phase of implementation in preparation for the second phase (19-year-olds).	January 15, 2020	DCF

Part XI: Statutory Changes

In the process of analyzing Act 201 and the existing statutory scheme to ensure that best practices and services are in place to support implementation, four policy areas were identified for the legislature to address by statute in the upcoming session. Once implementation is underway, there may be additional statutory changes needed that will further support the areas of focus identified in this report.

Statutory Changes Recommendations

For now, the Juvenile Justice Stakeholder Group identified and agreed on recommendations in the following areas:

Clarify/Set age of supervision by DCF

We recommend amending 33 V.S.A. § 5103(c) so that the age limit for DCF supervision is extended commensurate to the age of juvenile jurisdiction currently modeled in statute: 1.5 years beyond the birthday of jurisdiction. Under current law, for 16 and 17-year-olds, the age of supervision can extend to 19 years and 6 months. Following that same logic, for 18-year-olds, supervision would extend to 20 years 6 months, and for 19-year-olds, the age of supervision would extend to 21 and 6 months.

Clarify/Adjust custody to reflect that 18 and 19-year-olds are in the juvenile justice system

Prior to implementation of Act 201, when DCF has custody of a youth adjudicated delinquent, it has been presumed that it has full ***legal*** custody of the youth, with DCF acting as the parent or legal guardian and making decisions regarding placement, care, and treatment. DCF will not be able to take legal custody of 18- and 19-year-olds. DCF will need explicit, statutorily-granted authority to retain 'physical custody' of 18- and 19-year-olds, in a manner similar to DOC's 'physical custody' of adults.

It is recommended that a new definition of "physical custody" for 18- and 19-year-olds, along with procedures and authority of DCF, are added to 33 V.S.A. § 5102 and Chapter 52. Moreover, the statute should clarify that legal custody and the corresponding decisions made by the Department only apply to youth under age 18.

Youth age 18 or 19 in DCF's "physical custody" cannot be placed in DOC facilities. DCF needs to ensure that it has appropriate out-of-home placement options for this age group.

Ensure the Tamarack program is available to all 18- and 19-year-olds, regardless of the court handling their case.

According to 3 V.S.A § 164(b)(2), prosecutors may refer individuals with substance use or mental health treatment needs to the Tamarack program post-charge (except those charged with felony listed crimes). The program provides access to appropriate treatment or other resources "with the aim of improving the person's health and reducing future adverse involvement in the justice system." Successful completion of the Tamarack program results in a dismissal of the criminal charge. Currently this option is only available to those charged in the Criminal Division of the Superior Court. Modifying the statute to extend Tamarack to 18- and 19-year-olds charged in the Family Division would ensure that this important diversion strategy is available for all 18- and 19-year-olds.

Technical Corrections

Act 201 is a significant policy change. Successful implementation requires that Chapter 52 in Title 33 are carefully reviewed and that all references to 18-year-olds are modified to reflect the

change of jurisdiction. Furthermore, these modifications should include language that reflects the future effective date for 19-year-olds.

Citation of Emerging Adults

Amend 33 V.S.A. § 5206 to clarify which court a youth should be cited to by law enforcement.

Brief Description of Recommendation	Benchmarks/ Milestones	Who is responsible
Clarify/set upper age of DCF supervision for emerging adults in the juvenile justice system (age 20 years and 6 months for 18-year-olds; age 21 and 6 months for 19-year-olds).	7.1.2020	Legislature
Clarify/adjust statute to reflect that 18- and 19-year-olds are in the juvenile justice system and that DCF has "physical" (not "legal") custody.	7.1.2020	Legislature
Ensure the Tamarack program is available to all 18- and 19-year-olds, regardless of their case is handled in the Family or Criminal Division.	7.1.2020	Legislature
Partake in technical corrections so that Vermont law consistently reflects Act 201's expansion of juvenile jurisdiction.	7.1.2020	Legislature
Amend state statute 933 V.S.A. § 5206 to clarify to which court a youth should be cited by law enforcement.	7.1.2020	Legislature

Part XII: Conclusion

This report is a culmination of a thoughtful and thorough collaborative process undertaken by key stakeholders in Vermont's justice system, led by the Department for Children and Families with the support of the Emerging Adult Justice Project of Columbia University's Justice Lab. It provides a road map for Vermont's implementation of Act 201's historic expansion of the juvenile justice system to include most youths up to the 20th birthday.

A full list of the recommendations made in this report can be found in Appendix A and are divided into categories (e.g., diversion, court process, etc.). The key to successful implementation will be Vermont's: (1) use of robust and effective diversion and reservation of the formal court process only for those cases that cannot be appropriately served in an alternative manner; (2) streamlining the court process so that cases are handled as expeditiously as possible; (3) strengthening inter-agency communication to improve service delivery for youth, families, and victims, and (4) ensuring a full continuum of dispositional options, including immediate,

short-term, targeted, and developmentally appropriate responses that do not require lengthy probation supervision. Although the current caseloads of 18- and 19-year-olds charged with non-Big 12 cases in the adult Criminal Division are small, especially when considering the overall caseload of the Criminal Division and DOC, the shift will significantly increase the caseload of the juvenile justice system if Vermont does not make the necessary adjustments. Following the recommendations in this report will allow the Family Division and the Department for Children and Families—the entities that will be most impacted by this reform—to devote attention, time, and resources to the cases that need a formal response and intervention,

The implementation planning process for Act 201 has given Vermont stakeholders an opportunity to collectively examine the current system, identify critical areas to improve upon, and find ways to better serve *all* youth.

Following Vermont's lead, other states are actively considering similar legislative proposals in order to improve youth outcomes and increase public safety. By raising the age of juvenile jurisdiction, Vermont will be tapping into the expertise and capacity of its juvenile justice systems to provide effective, fair, and developmentally appropriate responses to older adolescents. Vermont leads the nation in emerging adult justice reform.

Part XIII: Appendices

Appendix A: Full Recommendations Chart

	Brief Description of Recommendation	Benchmarks/Milestones	Who is responsible
Diversion	JJ Stakeholder group approach Agency of Education to collaborate on the schools' role for overseeing and providing guidance on school-based issues so issues are handled internally.	February or March of 2020	DCF and members of the stakeholder group
	Outreach to law enforcement (Department of Public Safety and the Criminal Justice Training Council) regarding increasing training and support for schools and police. Subsequent collaboration to increase training.	February or March of 2020 for outreach, complete training by December 2021.	DCF and SAs
	Increase the use of pre-charge diversion for youth at CBRJs, with the four-year goal of diverting 50-60% of cases pre-charge.	December 2023	All stakeholders involved with one or all strategies to achieve this benchmark.

	Expand and refine the Family Division's diversion programs, with the four-year goal of diverting an additional 25-30% of cases pre-merits. Expand programs targeted at particular issues such as the Youth Substance Abuse Safety Program, Tamarack, and other youth specific programming. Additionally, DCF evaluate BARJ's role with respect to its delineation of services and whether it's the correct balance of delinquent and non-delinquent caseload (i.e. truancy). Additionally, DCF evaluate BARJ's role with respect to its delineation of services and whether it's the correct balance of delinquent and non-delinquent caseload (i.e. truancy).	December 2023	All stakeholders involved with one or all strategies to achieve this benchmark.
	Long-term strategy: Evaluate and address other barriers to youth entering or completing diversion programs. Short-term strategy: use text messages to remind diversion participants of their required meetings.	Complete evaluation: 7.1.20 Address barriers: 12.31.20	DCF, DOC, and AGO
Maximizing the Efficiency of the Family Division	New mandatory court timelines – Preliminary hearing to disposition = 45 days.	Immediate: Pilot in two counties Analyze and expand pilots: 1.1.21	Judiciary and all stakeholders
	Improve case processing so cases move through the court process as quickly as possible. Strengthen the use of non-court time to manage schedules and reach case resolution by Adding required (pre-	Immediate: Inclu de in pilot	Judiciary and all stakeholders

	trial) case conference where the parties confer on case.		
Non-Custodial Post-Merits Options	Do not apply fines in Vermont's Family Division.	Immediate	All
	Expand immediate, short-term, targeted and discrete options (could be in lieu of formal probation, when appropriate), including e-courses, that can be used by CJC, BARJ, Court Diversion, direct-referral programs (post disposition), and probation, and encourage their use.	Identify curricula: 3.30.20 Modify curricula and prepare implementation strategy: 5.30.20	DCF; DOC/AGO possible
	Increase direct referral; post-adjudication/pre-DCF supervision by the court to community-based restorative justice providers.	Strategy: 5.1.20 Implementation 7.1.20	Judiciary, DCF (BARJ) and DOC (CJCs)
	End the routine use of probation in delinquency cases post-merits, looking to other states for examples.	Identify and analyze options from other states: 1.15.20 If feasible, pursue for 7.1.20	Stakeholder Group
	Explore and create new probation structures that limit intensive supervisory role when appropriate, such as administrative probation.	Pilot initiated by 12.31.20	DCF with input from stakeholders
	Shorten lengths of probation so they are proportional to the offense; specifically set the maximum time of supervision of 12 months for a felony and a maximum time of supervision of 6 for a misdemeanor. Incentivize compliance with conditions of probation by reducing lengths of probation when a youth is compliant for a given amount of time. (For example, one month of compliance reduces supervision by one week or 15 days.)	7.1.20	Judiciary and DCF in lead, all stakeholders involved.

	Use Positive Youth Development Model (see Appendix C) – Engage youth throughout the life of their case, concrete conditions of probation that are age appropriate, incentive-driven, and take into account the important positive relationships (outside of traditional family).	Education and training: on-going Modify approaches to supervision: immediate and on-going.	All stakeholders DCF and others as needed or identified.
Physical Custody	Clarify/adjust statute(s) to reflect that 18- and 19-year-olds are in the juvenile justice system and that if DCF has custody over them, it is "physical" (not "legal") custody.	7.1.2020	Legislature, with input from the Stakeholders Group
	Continue to analyze best placement and treatment options for *all* youth in DCF custody (legal or physical) in the delinquency system.	On-going	DCF
Victims' Rights	Clarify that victim advocates should be provided in all cases to provide support, information, consultation, and notification and ensure they are assigned in all cases.	7.1.20	State's Attorney Victim Advocates, DCF and Courts
	Create consistency in forms used by victim advocates. Clarify the procedure for disseminating the Victim Impact Statement to all parties, and request for notice of release and the notice of victims' rights to the victim.	In progress	Victim Advocates with input from the court and DCF
	Evaluate the process for requesting and receiving restitution in delinquency cases and release an informational memo to instruct practitioners on operations.	7.1.20	Victim Advocates/Center for Crime Victim Services
	Formally create regular opportunities for DCF family services workers and victim advocates to meet and communicate.	1.31.20	DCF and Victim Advocates

DCF Operational Plan	Explore and use collaboration, communication, and creative approaches among stakeholders, including incentivizing cooperative efforts between stakeholders to reduce youth in court or custody.	Pilot in 2020/21	DCF and stakeholders
	Create the role of Victim Services Specialists at DCF to offer victims support, information, and connection to services post-disposition.	7.1.20	DCF
	Impose, develop, and implement standards on Court Diversion programs to direct them to be shorter/more time-limited interventions. Develop and implement general program standards related to emerging adults for BARJ, CJCs and Court Diversion.	7.1.20 Ongoing	AGO, DOC and DCF with stakeholder input
	When cases are unsuccessful in Court Diversion, allow the court to play a role before proceeding to prosecution.	Pilot 1.1.20	Judiciary, SAs, Diversion program/AGO
	Update data systems and collect data to ensure outcomes of the statutory change are measured and evaluated.	Prioritize for 7.1.19 and will need to be ongoing	All
Act 201 Implementation: Ongoing data collection and analysis	Identify an entity to aggregate existing data and generate a summary report of relevant data no less than annually.	Identify method for aggregating data: 6.1.20	Members of the Stakeholder group
	Compile a list of all data currently collected by various entities focused on youth in the juvenile justice system and assess which pieces of data are most critical to aggregate and review on a regular basis.	Compile list by February 1, 2020 Assess with stakeholders by February 28, 2020	DCF compile with input from all stakeholders

	Collectively identify any missing data that stakeholders believe are critical to allow Vermont to evaluate the impact and success of Raise the Age, assess the barriers to collecting or generating that data, and produce a brief to the legislature outlining what policy or funding changes are required to generate that data.	February 28, 2020	DCF with input from all stakeholders
	Identify composition of outcome study and evaluation that takes into account the important markers for emerging adult desistance and reduced risk including: meaningful employment; education completion; stable housing; positive social connections. These, combined with recidivism rates for this population, will provide Vermont an assessment of the first phase of implementation in preparation for the second phase (19-year-olds).	January 15, 2020	DCF
Statutory Changes	Clarify/set upper age of DCF supervision for emerging adults in the juvenile justice system (age 20 years and 6 months for 18-year-olds; age 21 and 6 months for 19-year-olds).	7.1.2020	Legislature
	Clarify/adjust statute to reflect that 18- and 19-year-olds are in the juvenile justice system and that DCF has “physical” (not “legal”) custody.	7.1.2020	Legislature
	Amend pre-existing statutory limitations on non-secure and secure placement for youth over 18 to ensure the juvenile justice system can provide appropriate services to older youth.	7.1.2020	Legislature, with input from the Stakeholders Group
	Ensure the Tamarack program is available to all 18- and 19-year-olds, regardless of their case is handled in the Family or Criminal Division.	7.1.2020	Legislature

	Partake in technical corrections so that Vermont law consistently reflects Act 201's expansion of juvenile jurisdiction.	7.1.2020	Legislature
	Amend state statute 933 V.S.A. § 5206 to clarify to which court a youth should be cited by law enforcement.	7.1.2020	Legislature

Appendix B: Juvenile Justice Stakeholders Group Members

Judiciary and Court Administrator's Office:
Brian Grearson, Chief Superior Court Judge
Theresa Scott, Court Operations
Dawn Sanborn, Court Operations

Office of the Defender General:
Marshall Pahl, Supervising Attorney & Deputy Defender General

State's Attorneys and Sheriff's Department:
Erica Marthage, State's Attorney, Bennington County
John Campbell, Executive Director
James Pepper, Deputy State's Attorney
Meghan Place, State's Attorney Victim Advocate

Vermont Network Against Domestic & Sexual Violence:
Jessica Barquist, Director of Policy & Organizing

Attorney General's Office:
David Scherr, Assistant Attorney General, Co-Chief, Community Justice Division

Department of Corrections:
Dale Crook, Director of Field Services
Cullen Bullard, Director, Classification & Facility Designation
Gary Marvel, Field Operations Manager

Department for Children and Families:
Leslie Wisdom, General Counsel
Lindy Boudreau, Juvenile Justice and Adolescent Services Director
Elizabeth Morris, Juvenile Justice Coordinator
Karen Vastine, Senior Advisor to the Commissioner

Appendix C: Positive Youth Development/Positive Youth Justice

Rooting juvenile justice practice in the Positive Youth Development (PYD) model (sometimes referred to as Positive Youth Justice (PYJ)) can help ensure that the developmental needs of emerging adults are being fully and effectively met. While traditional juvenile justice focuses on "fixing" the youth's personal problems and deficits, the PYD approach provides a wide range of pro-social experiences so youth can access greater opportunities, supports, positive roles, and relationships.[110] The approach demands that services provided are youth-appropriate, youth-led, concrete, and positively framed.[111] PYJ focuses on developing the young person's pre-existing strengths, assets, and goals in six life domains: work, education, relationships, community, health, and creativity.[112] In so doing, it encourages adherence to the case plan and promotes the "primary developmental task" of this life stage: "integrating different social roles into a coherent identity with a stable set of commitments to roles, values, and beliefs."[113]

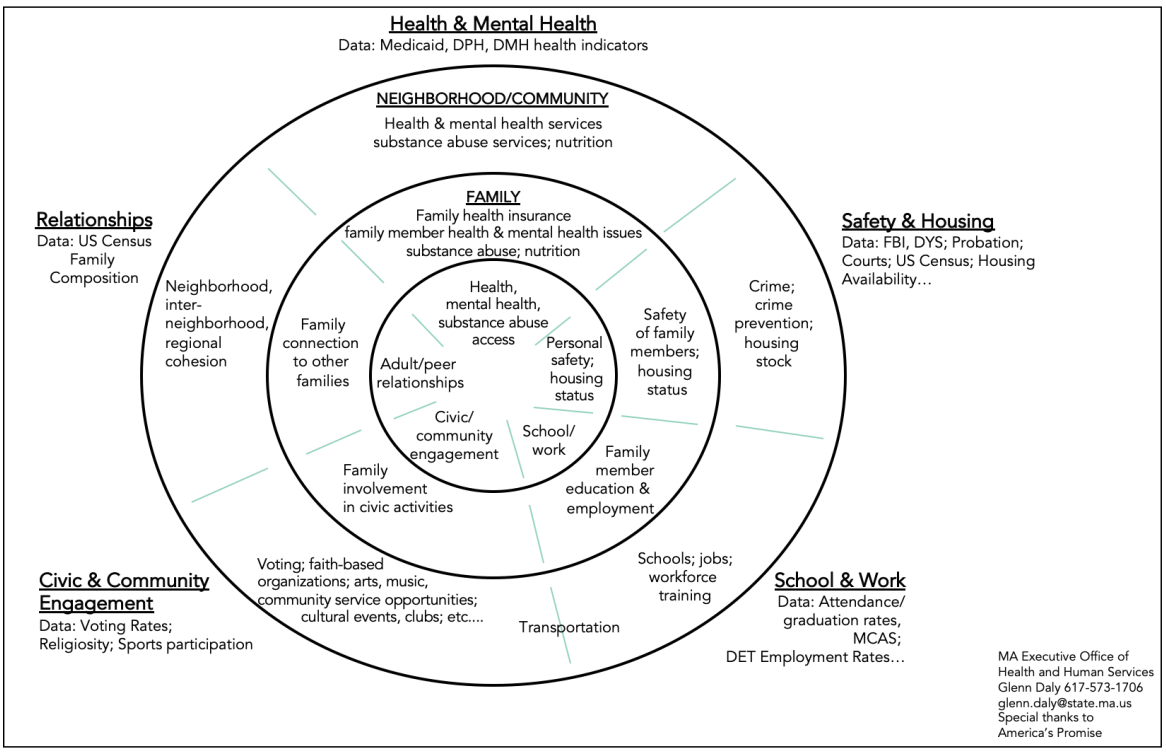
The figure below is used by the Massachusetts juvenile justice system and highlights the important PYJ "domains" to which all youth need to be connected in order to transition to healthy adulthood.

[110] See Butts, J. A., Bazemore, G., & Meroe, A. S., (2010). Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development. Washington, D.C.: Coalition for Juvenile Justice. Retrieved from https://positiveyouthjustice.files.wordpress.com/2013/08/pyj2010.pdf.

[111] Harvell, S., Love, H., Pelletier, E., & Warnberg, C. (2018, pp. 30-31). Bridging Research and Practice in Juvenile Probation: Rethinking Strategies to Promote Long-Term Change. Urban Institute. Retrieved from https://www.urban.org/sites/default/files/publication/99223/bridging_research_and_practice_in_juvenile_probation_7.pdf.

[112] Butts, J. A., Bazemore, G., & Meroe, A. S., (2010, p. 7). Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development. Washington, D.C.: Coalition for Juvenile Justice. Retrieved from https://positiveyouthjustice.files.wordpress.com/2013/08/pyj2010.pdf. The Massachusetts juvenile justice system adds safe places to live and learn.

[113] Nagaoka, J., Farrington, C., Ehrlich, S. B., Heath, R., Johnson, D. W., Dickson, S., . . . & Hayes, K. (2015, p. 75). Foundations for Young Adult Success: A Developmental Framework. Chicago, IL: The University of Chicago Consortium on Chicago School Research, Retrieved from https://consortium.uchicago.edu/sites/default/files/2018-10/Foundations%20for%20Young%20Adult-Jun2015-Consortium.pdf.



Central to the PYJ approach is the active involvement of youth and their families[114] in the development of a case plan. Listening to youth, "attending to them, withholding judgement, and encouraging collaborative dialogue"[115] helps convey respect, which makes youth "more likely to behave,"[116] promotes psychological well-being, fosters success, and actually "enhances adults' abilities to enforce rules."[117] It also helps facilitate the other developmental tasks of emerging

[114] As a developmental stage, emerging adulthood demands an understanding of what might constitute a "family" that is broader than its traditional definition. During emerging adulthood, it is normal for young people to take steps towards establishing their independence. This means that emerging adults' families are involved in their lives to varying degrees, and oftentimes romantic partners, peers, coaches, etc. are more influential than traditional caretakers. Sheidow, A., McCart, M., & Davis, M. (2016, p. 359, 366). Multisystemic Therapy for Emerging Adults with Serious Mental Illness and Justice Involvement, *Cognitive and Behavioral Practice 23*(3) 356–367 (2016). It is important to give emerging adults the opportunity to define their families; Harvell, S., Love, H., Pelletier, E., & Warnberg, C. (2018, p. 25). *Bridging Research and Practice in Juvenile Probation: Rethinking Strategies to Promote Long-Term Change.* Urban Institute. Retrieved from https://www.urban.org/sites/default/files/publication/99223/bridging_research_and_practice_in_juvenile_probation_7.pdf. (citing Annie E. Casey Foundation. 2013. Case Planning for Healthy Development. St. Louis, MO: Jim Casey Youth Opportunities Initiative).

[115] Fader, J. J. & Talley, D. (2019, p. 7). *Respect: A Necessary Element of Justice Interventions with Emerging Adults.* (Tentative title). Manuscript in preparation. (citing Wilson, A. R. (1993). Which equality? Toleration, difference or respect. In J. Bristow & A. R. Wilson (Eds.), Activating theory: Lesbian, gay, bisexual politics (pp. 171–189). London, UK: Lawrence and Wishart).

[116] Harvell, S., Love, H., Pelletier, E., & Warnberg, C. (2018, p. 24). *Bridging Research and Practice in Juvenile Probation: Rethinking Strategies to Promote Long-Term Change.* Urban Institute. Retrieved from https://www.urban.org/sites/default/files/publication/99223/bridging_research_and_practice_in_juvenile_probation_7.pdf (citing Fagan & Taylor, 2005).

[117] Fader, J. J. & Talley, D. (2019, p. 2). *Respect: A Necessary Element of Justice Interventions with Emerging Adults.* (Tentative title). Manuscript in preparation. (citing Sander, J. B., Sharkey, J. D., Groomes, A. N., Krumholz, L., Walker, K., & Hsu, J. Y. (2011). Social justice and juvenile offenders: Examples of fairness, respect, and access

adulthood, such as "developing mastery and competence needed to become productive citizens, interacting with others appropriately, establishing satisfying intimate relationships, engaging collaboratively within groups, . . . and building a positive sense of self and ability to govern themselves without being supervised."[118] Juvenile justice practices should include ample opportunities to engage young people (and their families) and for youth to guide the determination of the "case plan requirements and strategies, identification of short and long-term goals, and prioritization of focus areas."[119] This approach promotes the youth's personal growth and the likelihood of their success.

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in education settings. *Journal of Educational and Psychological Consultation*, *21*(4), 309-337; Sander, et al., 2011Bingham, C. (2004). Let's treat authority relationally. In A. Sidorkin & C. Bingham (Eds.), *No Education Without Relation* (pp. 23-37). New York: Peter Lang).

[118] Fader, J. J. & Talley, D. (2019, p. 2). *Respect: A Necessary Element of Justice Interventions with Emerging Adults.* (Tentative title). Manuscript in preparation. (citing Steinberg, L., Chung, H. L., & Little, M. (2004). Reentry of
young offenders from the justice system: A developmental perspective. *Youth violence and juvenile justice*, *2*(1), 21-38).

[119] Harvell, S., Love, H., Pelletier, E., & Warnberg, C. (2018, p. 25). *Bridging Research and Practice in Juvenile Probation: Rethinking Strategies to Promote Long-Term Change.* Urban Institute. Retrieved from https://www.urban.org/sites/default/files/publication/99223/bridging_research_and_practice_in_juvenile_probation_7.pdf.