

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.95 Name of Bill: An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court

Agency/Dept: AHS/DCF

Author of Bill Review: Karen Vastine

Date of Bill Review: 5/25/16

Related Bills and Key Players: None

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

☒ Support below ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*
Effective dates embedded in overview below:

H95 reforms Vermont's juvenile jurisdiction system to more closely align with brain development research and best practices for serving youth. Ultimately, the goal is not treat juveniles as adults for crimes outside of the most serious "Big 12". H95 includes additional provisions from other bills, which are described below.

Juvenile Jurisdiction:

- 10 and 11 year olds – only charged and adjudicated in family court (Big 12 offense can only be charged and adjudicated in the family division effective 7.1.2016)
- 12 and 13 year olds – all cases charged in family division. Big 12 cases can be transferred to criminal court (7.1.2016)
- 16 year olds who commit a misdemeanor or felony offense (except Big 12) must be charged in the family division. Felonies can be transferred to criminal court (misdemeanors cannot). Big 12 offenses may still only be charged in criminal court (1.1.2017)
- 17 year olds treated the same way as 16 year olds (1.1.2018)
- Age of Youthful Offender status extended from 17 years old to 21 years old (7.1.2018)
- Misdemeanor motor vehicle offenses will be filed in family division. The court will forward motor vehicle offense conviction records to DMV. (7.1.2016)

Pre-filing alternatives:

- States Attorneys have the option to refer a youth to a DCF approved community-based restorative justice program in lieu of filing charges in family court (youth can be referred back to SA if not accepted or if unsuccessful in completing the program)

Supervision:

- DCF extended supervision for 16 and 17 year olds charged in family court – youth up to 19.5 (1.1.18)

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- DCF supervision enhanced to include graduated sanctions for violations of probation (7.1.2016)
- YOs who violate DCF conditions of probation can be referred to DOC where any terms of probation may be applied including graduated sanctions and electronic monitoring
- 18 – 25 year olds who are incarcerated will be housed in a DOC facility dedicated for youth (1.1.2017)

Rights of Victims:

- Victim will be notified of the name of the youth and any conditions of release that are related to the victim or member of the victim's family or household. (Listed crimes.) (7.1.2016)
- Victim may file an impact statement with the court, attend the disposition hearing and provide a statement and the court shall consider the statement at the disposition stage. The victim shall attend the hearing if the court finds the victim's presence is necessary. (Listed crime) (7.1.2016)
- Victim will be notified of the name of the youth and any probation conditions that are related to the victim or member of the victim's family or household. (Non-listed crimes.) (7.1.2016)

Agency of Education: Restorative Justice Practices:

- The Agency of Education shall explore the use of restorative and similar practices regarding school climate and culture, truancy, bullying and harassment, and school discipline.

Study topics for Justice Oversight Committee:

- Fiscal implications of adjudicating in family court all offenders 18-20 years old (except Big 12 offenses)
- Consider the creation of an Office of Youth Justice for youth 25 years and younger
- Expanding YO status to age 24 (from 21)
- Allowing SAs discretion to charge 14 and 15 year olds who commit Big 12 offenses in either family or criminal court
- Housing options for 16 and 17-year-old Big 12 offenders
- Resources necessary to expand juvenile jurisdiction to 21-year-old

Also Included in H95:

H.400 An Act relating to Judicial Proceedings:

Overview:

Effective 7.1.16:

- Permanent Guardianship – when dissolved and child placed in DCF Custody, probate court to notify DCF Family Services Division, SA – CHINS initiated
- Disposition Case plan due 7 business days before disposition hearing
- Merit stipulations are not final orders subject to appeal separate from the resulting disposition order.

DCF proposed this bill in order to improve/address several procedural issues that were both impeding CHINS proceedings as well as permanency for children in DCF custody. DCF proposed an amendment to the Title 14 guardianship provisions to provide notice to DCF when a guardian dies and also to improve clarity (14 V.S.A. §§2666 & 2667). Under the current law, when a guardian dies, custody of the child automatically reverts back to the Department. However, DCF does not have any way of knowing that the guardian has died and that the child's custody has been transferred back to the Department other than

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by chance. This proposed change requires the probate division to notify DCF. This proposed change also clarifies the role and authority of DCF as the guardian of the child in these situations.

DCF also proposed an addition to §5223 to allow the court to provide notice to DCF in delinquency proceedings. Courts have not been providing notice to DCF of petitions filed in delinquency proceedings as they have felt that statutorily they were not authorized to include DCF in the notice. DCF needs to know about these petitions and is required to file a disposition case plan once the merits have been decided.

Finally, DCF proposed changes to some of the statutory timelines related to disposition case plans in juvenile delinquency and CHINs proceedings (§§5229, 5230, 5315 and 5316). This proposed change allows the Department to file the disposition case plan at least seven days before the hearing rather than filing it 28 days after the merits, and is more consistent with court practices.

2. Is there a need for this bill? *Please explain why or why not.*

There was a need for this bill. Vermont is one of the few states where 16 and 17 year olds are charged in criminal court as adults for any offense, including misdemeanors. These charges potentially have major collateral consequences for youth charged in adult court, including a public record, exclusion from the military, ineligibility for college loans and owning guns. This approach is antithetical to best practices for youth and what we've learned about brain science. Studies have shown that youth are much more amenable to treatment and rehabilitation, and as such should be treated differently from adults.

DCF has collaborated with the Vermont Defender General's Office, Department of Corrections, Victims' rights organizations, the Vermont Judiciary, Vermont ACLU and members of the Vermont House and Senate in drafting this bill.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

This bill has the potential to be very transformative for DCF and the other stakeholders listed above. We worked closely with Senate Judiciary to sequence the implementation of this bill so that the policy/practice shifts could be addressed.

We sequenced the bill regarding its policy and fiscal implications. It is our view that we can absorb the changes for sequenced FY17. We pushed back the other changes in anticipation of the resource implications for FY18. There may need to be additional resources provided to DCF to address an increase of 17 year olds in the juvenile system. The same is true for the provision that increases the age for Youthful Offenders which is scheduled for FY19.

This summer the DCF commissioner will convene a work group to identify resource needs and challenges and will be prepared to present those to the administration and the Justice Oversight Committee so that any policy or resource needs can be addressed in the upcoming legislative sessions.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

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There may be an impact on the Judiciary, the Office of the Defender General, State's Attorneys and DOC as described above. However, all of these entities, along with DCF, supported the bill and are willing to collaborate to determine the best way to shift resources as the proposed changes of H95 are implemented and are expected to report to the Justice Oversight Committee this Fall.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

This bill received broad support from stakeholders and partners with different perspectives on the issue.

6.2 Who else is likely to oppose the proposal and why?

No one opposed this bill.

7. Rationale for recommendation: *Justify recommendation stated above.*

See above.

8. Specific modifications that would be needed to recommend support of this bill:

N/A

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many?

N/A

Secretary/Commissioner has reviewed this document: _____ **Date:** _____