

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: H95

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

Agency/ Dept: DCF Authors of Bill Review: Karen Vastine with addendum by Lindy Boudreau

Date of Bill Review: 2.17.15 Related Bills and Key Players \_\_\_\_\_

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

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**Recommended Position:**

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

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**Analysis of Bill**

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**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

The bill proposes that all charges involving criminal conduct by individuals under the age of 18 be filed as delinquency proceedings in the Family Division of Family Court.

H95 has a provision for transferring cases to Criminal Court after a petition has been filed for delinquency.

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

Too many 16 and 17 years olds in Vermont facing criminal charges are being charged as adults. If convicted, they will have an adult criminal record. This has many negative ramifications for their future.

Historically and currently, for 16 and 17 year olds charged with a crime, the state's attorneys have discretion about whether to file in family division or criminal division. Because juvenile jurisdiction is time-limited and adult jurisdiction is not, some state's attorney have been reluctant to use the Family Court option, as they feel that there will not be enough time to address the young person's needs and risks.

Three years ago through Act 159, in an attempt to reduce the disincentive for state's attorneys, the juvenile statute (33 VSA Chap § 5103) was revised to extend juvenile jurisdiction from age 18 to age 18.5 under certain circumstances. The change to the statute also afforded the opportunity for youth to participate in a YASI (Youth Assessment & Screening Instrument) screening. Additionally, it has a provision to allow for a direct court referral to a restorative community based process in lieu of probation.

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

This change would have significant implications on DCF as its resources are utilized at almost all of the intercept points of the criminal justice system:

- In many counties, the Court's Family Division requires that DCF staff members are present at the preliminary hearing and all subsequent hearings for charged youth. In counties where this required, the DCF staff will attend these hearings regardless of the final case outcome. This added piece of staffing hearings is critical for that would be a new provision with this legislation.

- More youth being charged in the Family Division would result in an increased number of YASI screenings. As laid out in Act 159, a YASI screening completed prior to the Preliminary Hearing provides a clear picture of the youth's needs and can aid in the decision-making regarding case disposition.
- Regarding post-conviction supervision in the current system, 16 & 17 year olds are the responsibility of the Department of Corrections. DCF would receive cases that otherwise would have gone to DOC. It is possible that there could be an additional approximately 450 individuals added to the DCF caseload, but this is based on the number of 16 & 17 year olds convicted in district court. We are still trying to understand what we perceive to be a disconnect between the number of cases of 16 & 17 year olds convicted in Criminal Court, 433 in FY 14, and the number of 16 & 17 year olds on the DOC caseload, which currently stands at 9. This has proven to be a challenging question to answer - DCF, the Court Administrator's Office and DOC have been collaborating for some weeks now to analyze how/where 16 & 17 year olds have been charged. The courts are tallying the disposition of each of these cases.

DCF requires all of this information to analyze how this bill will impact DCF's resources. However, we can predict the places within our system where we anticipate an impact which will be staffing for the court hearings, administering the YASI screenings, and staffing for individuals placed on DCF probation.

#### **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?**

This would have a significant impact on family court. Cases in the family division require significantly more resources and are often more court-time intensive than their district court counterparts.

#### **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)**

Community Justice Centers and Court Diversion Programs will be supportive of this bill. They are in a strong position to assist with some of the caseload concerns. These community based restorative programs already provide an avenue to prevent youth from entering the deep end of the criminal justice system and utilize restorative justice principles to educate youth and hold them accountable. Along with along with the Balanced and Restorative Justice (BARJ) programs managed through a DCF contract, the community-based restorative justice programs accept cases at nearly every intercept of the criminal justice continuum and therefore can divert cases for low risk youth before a charge is brought and can serve higher risk youth who are charged and advance further into the court process. As cited earlier, Act 159 has a provision that allows for individuals convicted of a crime to be referred directly to a community-based restorative justice program in lieu of probation. This is an under-utilized option that should be explored utilized more. By leveraging community volunteers, these programs are cost-effective, however they may request additional resources if this change significantly increases their caseloads.

Additionally, the BARJ programs would see an increase in the number of individuals likely to participate in a YASI screening.

#### **6. Other Stakeholders:**

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

The Juvenile Defender, Court Diversion Programs, Community Justice Centers, some State's Attorneys, the Council for Children and Families Prevention Programs are likely to support this legislation. These players are all invested in better outcomes for youth and as such preventing youth from entering the adult system where possible.

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

State's Attorneys will be concerned about their prosecutorial discretion and the courts have expressed significant concern about resources and docket constraints. Additionally, victim advocates have concerns about how the confidential family division court proceedings will impact timely and helpful communication and notification to victims.

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

In principle this bill is a good idea. DCF supports that cases can be transferred to district court for the 12 major offenses listed in the bill. We would like to know that the caseload increase can be absorbed by pre-charge or charge options through Community Justice Centers or Court Diversion and/or if other alternatives to probation such as fines and community service can be inclusive of this change as that will ameliorate the impact on DCF's resources.

**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

It may prove necessary to add language from the criminal statute to allow for family court to offer alternatives to probation.

**9. Gubernatorial appointments to board or commission?**

**Secretary/Commissioner has reviewed this document:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Youthful Offender Statistics:**

FY09 – 23 cases filed  
 FY10 – 23 cases filed  
 FY11 – 72 cases filed  
 FY12 – 76 cases filed  
 FY13 – 69 cases filed  
FY15 – 15 cases filed (as of 1/29/15)  
 Total – 278 cases

**Criminal Division Filings, 16-17 year olds:**

2011 – 775 cases  
 2012 - 682 cases  
 2013 - 507 cases  
2014 - 433 cases  
 Total - 2,397 cases

\*Data above from Court database.\*

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**DCF Data:**

All Delinquent Youth	
Case Type	Total
DC	133
DP	127
DS	4
DY	42
Total	306

Delinquent Youth	Age		
Case Type	16	17	Total
DC	33	31	64
DP	20	42	62
DS		4	4
DY	13	8	21
Total	66	85	151

**Case Type Definitions:**

**DC** - Temporary or ongoing DCF custody **AND** youth adjudicated as delinquent or youthful offender  
**DP** - Post-disposition **AND** adjudicated delinquent or youthful offender on juvenile probation.  
**DS** - Active delinquency petition, Pre-disposition **AND** conditional custody or protective supervision order  
**DY** - Active delinquency petition  
 Pre-disposition, No conditional custody or protective supervision order  
**OR**  
 Youth sent to family court for youthful offender consideration, pre-disposition.