



National Center for

Juvenile Justice

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# **Final Report**

## **Juvenile Justice Jurisdiction Study**

**Submitted to**

**Vermont Agency of Human Services**

**Juvenile Justice Commission**

**Children and Family Council for Prevention  
Programs**

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## Table of Contents

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List of Figures and Tables .....	iv
Executive Summary .....	vi
Introduction .....	1
Statement of the Problem .....	1
Research Questions .....	1
Strategy .....	2
The Current Borders of Vermont’s Juvenile Justice System .....	6
Vermont’s Current Handling of Older Juveniles .....	13
Juvenile Arrests .....	13
Filing of Charges .....	14
Post-Filing Diversion .....	17
Case Processing .....	18
Temporary Holding .....	18
Dispositions .....	19
The Range of Jurisdictional Change Options .....	21
The Need for Change .....	21
Change Options to be Explored .....	25
Quantitative Approach to Modeling Jurisdictional Change Impacts .....	27
Jurisdictional Change Option One: A Waiver-Only System .....	30
Impact of Option One on Workloads and Case Profiles .....	33
Dispositional Impact of Option One .....	35
Jurisdictional Change Option Two: Waiver With Exclusions .....	40
Jurisdictional Change Option Three: Restore Misdemeanor Cases to Family Court .....	44
Impact of Option Three on Court and Legal System Workloads and Case Profiles ..	46
Impact on Juvenile Justice System of Care Programming, Services and Staffing .....	48
Projected Dispositions of Misdemeanor Cases .....	49
Formal Processing and Diversion Impact .....	52
Probation Caseload Impact .....	54
Custody Caseload Impact .....	59
Other DCF Staffing Impacts .....	60
Impact on Detention and Placement Resources .....	61
Other Impacts .....	64

Blended Sentencing Change Options .....	66
Jurisdictional Retention Change Options .....	71
A Strategic Response to Jurisdictional Change .....	76
Conclusion .....	82
Appendices .....	85

## List of Figures and Tables

---

Figure 1: Vermont Juvenile Arrest Rates, 2000-2005 .....	14
Table 1: Profile of Vermont Juvenile Arrestees, 2005-2006 .....	14
Table 2: Delinquency Cases Disposed in Family Court, by Offense, FY 2006 .....	16
Table 3: Criminal Cases Disposed in District Court, by Offense, FY 2006 .....	17
Table 4a: Delinquency Cases Disposed in Family Court, FY 2006 .....	29
Table 4b: Criminal Cases Disposed in District Court, FY 2006 .....	29
Table 4c: Adjusted Family Court Delinquency Case Workload .....	29
Table 5: 16- and 17-year-olds Disposed in Family and District Courts, by Offense .....	33
Table 6: Impact of Moving all 16- and 17-year-olds from District to Family Court .....	34
Table 7: Estimated New Service Workloads Based on Family Court Dispositional Tendencies .....	36
Table 8: Estimated New Service Workloads Based on District Court Dispositions .....	39
Table 9: Delinquency and Non-5506 Offense Cases Involving Older Youth in Family and District Courts .....	42
Table 10: Impact of Moving 16- and 17-year-old Non-5066 Offense Cases from District Court to Family Court .....	42
Table 11: Estimated New Service Workloads Based on Family Court Dispositional Tendencies for Non-5506 Cases .....	43
Table 12: Estimated New Service Workloads Based on District Court Dispositions for Non-5506 Cases .....	43
Table 13: Delinquency and Misdemeanor Cases Involving Older Youth in Family and District Courts .....	46
Table 14: Impact of Moving all 16- and 17-year-old Misdemeanants from District Court to Family Court .....	47

Table 15: County Impact of Moving 16- and 17-year-old Misdemeanants from District to Family Court .....	48
Table 16: Estimated New Service Workloads Based on Family Court Dispositional Tendencies for Misdemeanor Cases .....	50
Table 17: Estimated New Service Workloads Based on District Court Dispositions for Misdemeanor Cases .....	51
Table 18: Estimated Impact on DCF District Offices if 221 Probation Cases Were Added Statewide .....	57
Table 19: Estimated Impact on DCF District Offices if 328 Probation Cases Were Added Statewide .....	57
Table 20: Living Arrangements of 16- and 17-Year-Olds in DCF Custody, June 30, 2007.....	62
Table 21: Projected Living Arrangements of New Custody Cases, With Estimated Annual Costs.....	63

## Executive Summary

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Although 16- and 17-year-olds are still “juveniles” in Vermont, when they come into conflict with the law they are generally prosecuted as adults and sanctioned in the criminal justice system. This study explores the likely consequences of a fundamental change in this approach, which would effectively shift some or all of this older juvenile offender population into Vermont’s juvenile justice system. It is intended to help policymakers plan for a range of possible changes in Vermont’s approach to older youth, by estimating the likely impact of these changes—including the costs they would entail, the new services, programming and resources they would require, and the associated policy and practice adjustments they would necessitate.

To carry out this study, NCJJ analyzed data and gathered background information from individual and group interviews on Vermont’s current handling of 16- and 17-year-old offenders, their offenses and other characteristics, the ways they are sorted into the juvenile and adult criminal justice systems, and the services and sanctions they receive in each system. We developed a preliminary continuum of possible jurisdictional change options for Vermont’s consideration, and worked with a selected focus group of Vermont professionals to arrive at a consensus on the options worth exploring. Restricting our focus to the change options chosen by the group, we developed a statistical analytic model for projecting volume and service impacts based on available data. After presenting the preliminary results of our analysis to the reconvened focus group and getting their feedback, we refined and elaborated the analytic model into the form presented here.

## **Current Vermont Law and Handling of Older Youth**

Vermont’s approach to older juveniles departs sharply from practice in most other states. The exclusive original jurisdiction of the Family Courts is drawn very narrowly, and the effective “age ceiling” for delinquency jurisdiction is unusually low. While Family Court judges have little role in determining which cases involving juvenile-age youth are appropriate for criminal filing, the discretionary power given to Vermont State’s Attorneys is very broad—possibly the nation’s broadest. State’s Attorneys file an overwhelming proportion of cases against older youth in District rather than Family Court—especially for 17 year olds—even where trivial offenses are involved. And although Vermont has built in statutory mechanisms designed to allow for flexible and individualized judicial consideration of these youth—including a “reverse waiver” option under which they may be returned to Family Court for trial, and a “blended sentencing” provision that permits them to receive conditional juvenile dispositions even after criminal conviction—these mechanisms are rarely used.

As a result, the proportion of juvenile-age offenders who actually benefit from Vermont’s juvenile justice system is unusually small. Youth who are 16 or 17 account for the majority of juvenile arrests in Vermont, but they make up only about a fifth of the delinquency cases disposed in Family Court. This is true even though, on the whole, the offenses with which they are charged are not more serious than those usually handled by Family Court. In fact, age rather than offense seriousness seems to be the primary factor driving filing decisions. Cases against 16-year-olds are sorted almost evenly between District and Family Courts. But a 17-year-old is twelve times as likely to go to District Court as to Family Court.

Whether State’s Attorneys file charges against 16- and 17-year-olds in Family or District Court, they frequently send them to be informally resolved by county-based diversion programs that handle referrals from both courts. However, it appears that this age group is more than twice as likely to be diverted from District Court than from Family Court.

Of those Family Court cases involving 16- and 17-year-olds that are not diverted and/or dismissed, about half receive probation-only dispositions and are supervised by Department of Children and Family (DCF) caseworkers. The other half are ordered into DCF’s legal custody—a status that involves more intensive supervision and services from DCF caseworkers, and usually (but not invariably) out-of-home placement—either instead of or in addition to probation.

In District Court, apart from the substantial proportion of cases that are diverted and/or dismissed, 16- and 17-year-olds are most often ordered onto Department of Corrections (DOC) probation or required to pay fines or costs only. Those placed on probation are almost invariably assigned to “low field supervision status” on the basis of a minimal DOC risk screening. About one in ten cases involving 16- and 17-year-olds in District Court results in some form of incarcerative sentence, which may include furloughing. Youth in this age group are almost never placed in prison.

### **Jurisdictional Change Options**

A focus group of Vermont juvenile and criminal justice professionals convened to help guide this study was briefed on Vermont’s current approach to 16- and 17-year-olds and how it compares with those of other states. In response, the group asked NCJJ to explore the likely consequences of three basic change options:

- **Option One: Waiver-Only.** All cases against under-18 youth would originate in Family Court, and could be transferred to District Court only with judicial approval following a discretionary waiver hearing. All other transfer options, including prosecutorial discretion to file certain cases in District Court, would be eliminated.
- **Option Two: Waiver-With-Exclusions.** All cases against under-18 youth would originate in Family Court, except those involving the dozen serious offenses listed in 33 V.S.A. §5506. As under current law, these offenses would have to be handled in District Court. But prosecutors would have no discretion to file other cases in District Court.
- **Option Three: Restore Misdemeanor Cases to Family Court.** All cases against under-18 youth accused of misdemeanors would originate in Family Court and could be transferred only by judges. Cases involving 5506 offenses would originate in District Court. And a third category of cases involving 16- and 17-year-olds accused of felony-grade offenses could originate in either forum, at the discretion of prosecutors.

In addition, the focus group asked NCJJ to look into ways Vermont’s blended sentencing law could be redesigned to make it a more useful and effective tool for handling older youth, and to explore how “raising the ceiling” on extended juvenile jurisdiction in Vermont might interact with other possible changes being contemplated.

### **Option One/Waiver-Only: Impact**

**Court Workload.** Based on analysis of 2006 Family and District Court data, changing to a waiver-only system, in which all cases against under-18 youth originate in

Family Court, could be expected to add about 955 cases to the Family Court's docket per year, increasing its annual delinquency workload by 72%. The overall workload of the court—including divorce, child support, child abuse and neglect, etc.—would increase by less than 5%.

**Family Court Case Profile.** As a result of a change of this kind, the age of the delinquency population the Family Court deals with would rise considerably. If the older juveniles now in District Court became the Family Court's responsibility, 16- and 17-year-olds would account for 55% of the Family Court's adjusted delinquency workload (as opposed to 22% now). The overall offense profile of the Family Court's cases would not change dramatically, but drug cases would make up a much larger proportion of the cases handled. So would theft and obstruction of justice cases. But the overall proportion of person offense cases would actually decline.

**Dispositions.** Using the available data, there are two ways to estimate what kinds of dispositions the newly introduced juveniles would be likely to receive in Family Court:

- If we judge by *what the Family Court has done in the past with youth of the same age and offense characteristics*, we would expect a 32% increase in the overall number of Family Court cases that are diverted, an 83% increase in the number that are placed on DCF probation only, and a 106% increase in the number of DCF custody dispositions (whether or not coupled with probation orders).
- If we instead judge by *what was actually done with the District Court cases that would be shifted to Family Court*, we would expect a 95% increase in diverted cases and a 39% increase in probation dispositions in Family Court.

(Since there is nothing strictly comparable to DCF custody in the adult system, District Court sentencing data did not permit any inference regarding increases in DCF custody dispositions.)

### **Option Two/Waiver With Exclusions: Impact**

In fiscal 2006, only 14 cases against 16- and 17-year-olds involved offenses of the kind that would be excluded from Family Court jurisdiction under this option.

Accordingly, in the event of a change to a waiver-with-exclusions system, the number of youth that we would expect to see added to the Family Court's workload would hardly differ at all from the number added by Option One: instead of 955 additional youth, Option Two would add 941. Except for this small and symbolically important handful of cases, then, the gross effects of a change to Option Two—on workloads, age and offense profiles, and probable dispositions—would be the same as those outlined above.

### **Option Three/ Restoring Misdemeanor Cases to Family Court: Impact**

**Court Workload.** Judging from fiscal 2006 court data, bringing all 16- and 17-year-old misdemeanants into the Family Court would add about 829 cases to the court's docket annually, increasing its delinquency workload by 63%. (Again, the Family Court's overall workload, including cases of all types, would increase between 4% and 5%.)

**Family Court Case Profile.** Older youth would make up 52% of the court's adjusted delinquency caseload. As before, drug and obstruction of justice cases would increase as a proportion of the cases handled.

**Dispositions.** Using the *Family Court's dispositional tendencies* as a basis for judging the dispositions these misdemeanants would receive, we would expect a 30% increase in diversions from Family Court following the change, a 67% increase in

probation-only cases, and 97% increase in DCF custody orders (including those in which custody and probation orders are combined).

Using the *District Court's actual disposition of misdemeanor cases* to calculate the dispositions they would likely receive in Family Court, we would expect diversions there to increase by 84% and probation orders to increase by 33%.

**Diversion.** Diversion costs would be largely unaffected by the shift of misdemeanor cases from District to Family Court, since the same diversion programs would likely be handling these cases, regardless of the referral source.

**Probation Practice and Costs.** Probation costs could be substantially affected, on the other hand. DOC probation supervision for 16- and 17-year-olds tends to be very low-intensity. The probation officers to whom the bulk of these youth are assigned manage very large caseloads, of which 16- and 17-year-olds make up only a small part. Almost no savings would be realized by shifting responsibility for these youth out of DOC.

For DCF the shift could represent a significant new burden, however. According to one of our two estimates of the probation impact of shifting misdemeanants from District to Family Courts, DCF would receive a total of 221 new probation-only cases a year. According to the other, DCF would get 328 new probation-only cases. (Cases in which the court orders probation as well as custody are dealt with as custody cases, below.)

Calculating how many new caseworkers might be needed to accommodate these new probation-only cases is complicated by the fact that DCF caseworkers often carry mixed (delinquency and non-delinquency) caseloads. But if new cases were

assigned to caseworkers handling only delinquency probation cases, and they adhered to the recognized national standard of 35 cases per worker, the addition of 221 probation cases would call at a minimum for the hiring of between six and seven new caseworkers statewide, at an annual cost of about \$400,000. The addition of 328 probation-only cases would require at a minimum the hiring of between nine and ten new probation-only caseworkers, at an annual cost of about \$600,000. Because the new cases would be scattered across a dozen DCF districts statewide, however, it may not be realistic to expect to cover them in this way. A better option might be to take the opportunity presented by the expanded probation caseloads to switch to a system in which specialized probation workers handle all probation-only cases, rather than caseworkers with mixed caseloads. In order to make this change, and assign at least one dedicated probation worker to handle the expanded caseload in each DCF office, DCF would need to add at least 12 and as many as 15 new FTE probation-only caseworkers statewide—at an annual cost of between \$763,080 and \$953,850.

**Custody.** Based on the court data alone, without further information on the needs and circumstances of the 16- and 17-year-old misdemeanants whose cases are currently handled in District Court, it would appear that the number of delinquent custody dispositions (including both custody-only and custody-with-probation orders) would double in the event of a shift of misdemeanants to Family Court. If DCF custody cases were to double, and the current average caseload of 16 were to remain constant, the change would require DCF to hire an additional 22 caseworkers, at an annual cost of about \$1.4 million.

When this figure is added to the projected annual cost of additional caseworkers needed to supervise the expanded probation-only caseload, and the need for additional supervisors and administrative support staff is also taken into account, it appears that as many as 37 additional DCF staff could be necessary, at a total annual cost approaching \$3 million.

**Detention and Placement.** The impact of shifting 16- and 17-year-old misdemeanants on detention and placement resources in the juvenile system is much harder to estimate. The addition of older misdemeanants to the Family Court workload would not actually add to the pool of juveniles technically eligible for pre-trial detention at the Woodside Juvenile Rehabilitation Center, because 16- and 17-year-olds accused of misdemeanors may already be held in the facility’s detention wing pre-trial. But because the wing is also used as a placement for short-term sanctions and a response to probation violations, it would likely be severely strained by the addition of hundreds of new candidates for these uses.

Placement impact is even more unpredictable. No misdemeanants are currently “placed” in the adult system, in the sense of being held for long periods for public safety or other reasons. Limitations in the data—particularly the lack of information on the possible treatment and other needs of this group—make it impossible to say with any certainty how many of these youth might be thought to require substitute care if they became the responsibility of DCF. But if we assume, based on current Family Court dispositional patterns involving older youth, that DCF custody dispositions would be doubled in the event of a shift, and that the projected new custody cases would be spread across custody settings in the same way that 16- and 17-year-old delinquents in custody

are currently spread, we might expect Vermont to incur something like \$12 million in annual substitute care costs as a result of this change.

### **Blended Sentencing Change Options**

Vermont's Youthful Offender law provides a mechanism whereby a cooperative youth who would otherwise be sanctioned as a criminal may be returned to the juvenile system for disposition purposes. The juvenile disposition is only conditional—with a suspended adult sentence serving as a guarantee of good behavior—but in theory it is better than an adult correctional sentence. The law is obviously intended to soften or mitigate the effects of Vermont's transfer laws, at least in individual cases, by offering an avenue to a less harsh sanctioning system. In fact, however, the Youthful Offender law is rarely used. Juveniles themselves—who must initially seek Youthful Offender treatment in District Court—apparently perceive DOC sanctioning as lenient enough already. Whether or not their choice is wise, they seem to prefer the consequences of a criminal conviction over what may be a more intrusive form of sanction—involvement with DCF.

Given Vermont realities, the Youthful Offender law may not be the kind of blended sentencing law that is needed. A more useful option could serve as an *alternative* to transfer for older and more serious youth, instead of a mechanism for mitigating the effects of transfers that have already taken place. It would give State's Attorneys an incentive—in the form of an enhanced array of potential sanctions—to try older youth in Family Court. Over time, it would tend to strengthen prosecutors' confidence in the juvenile justice handling of older youth, and give the juvenile system the tools it needs to live up to that confidence.

A number of states have blended sentencing statutes of this kind, described in the body of the report, which could serve as models for Vermont.

## **Jurisdictional Retention Change Options**

Only a small minority of states automatically cut off jurisdiction over delinquents when they reach age 18. Current Vermont law, by making it impossible for delinquents to be served, held or supervised beyond their 18<sup>th</sup> birthdays, drastically limits the juvenile system's capacity to handle older offenders, whether they are serious or not.

Vermont's low "age ceiling" would become a far more serious problem if any or all of the 16- and 17-year-olds currently handled in District Court were shifted to Family Court. Vermont trial judges responding to a survey conducted for this study clearly indicated that extended jurisdiction beyond age 18 would be needed in the event of such a change.

Fortunately, 44 states currently have laws empowering their juvenile courts to retain jurisdiction beyond the age of their original jurisdiction, either as a matter of course or in specially defined circumstances. The basic types of extended jurisdiction laws that Vermont might adapt for its own uses, with examples, are discussed in the body of the report.

### **A Strategic Response to Jurisdictional Change**

Vermont could respond *operationally* to the jurisdictional changes being contemplated—simply absorbing the additional workload in the juvenile justice system, expanding existing programs and operations to accommodate the influx of new cases—or it could respond *strategically*. The latter approach would use the change as an opportunity to identify bedrock values and beliefs, clarify and publicly articulate a mission in line with them, and develop system-wide goals and measurable objectives that suit the mission.

For Vermont’s juvenile justice system, the introduction of a large number of additional delinquency cases involving older juveniles could represent a real opportunity to clarify and refocus on its delinquency responsibilities. Although a few other states place authority over delinquency services in a child welfare agency as Vermont does, there is no other state in which child welfare and delinquency functions are mingled as thoroughly as in Vermont. Maintaining a clear focus on delinquency-related purposes and goals has to be difficult under these circumstances. But the introduction of a large number of older delinquents to the juvenile system might provide the critical mass of cases needed to make a true delinquency focus practical.

## **Conclusion**

There are compelling reasons for Vermont to consider altering its approach to older youth in conflict with the law. In handling a substantial majority of its 16- and 17-year-old offenders in the same manner as adult criminals, Vermont is clearly far outside the mainstream. Especially in view of recent advances in our understanding of the profound developmental differences between adolescents and adults, it seems likely that the state would get better outcomes by trying and sanctioning these youth in ways that appropriately take account of their developmental status and developmental needs.

But it is equally clear that such a change in approaches would cause substantial disruptions. Vermont should not consider shifting older youth from the adult to the juvenile system without adequate preparation and input from all system actors likely to be impacted. In commissioning this study, Vermont has taken a good first step. But before further steps are taken, every agency and individual involved in responding to youthful offenders should have opportunities to weigh in, to contribute information and perspective, and to help the state plan and prepare.

In planning and managing the transition to a juvenile justice system that is capable of responding effectively to all juvenile-age offenders, Vermont can benefit from the experience of Connecticut, which recently changed its laws to expand juvenile justice jurisdiction to include 16- and 17-year-olds. By delaying full implementation for a period of years, Connecticut gave itself an opportunity to achieve orderly change and avoid unforeseen consequences. If Vermont chooses to change, it should similarly give itself plenty of time to undertake a thoughtful planning process, appropriately reallocate resources, complete new hiring and training initiatives, and establish or contract for programming to meet projected service needs.

### **Statement of the Problem**

In order to generate information needed for contingency planning, the Vermont Agency of Human Services (AHS), Juvenile Justice Commission (JJC), and Children and Family Council for Prevention Programs (CFCPP) commissioned this study of the likely effects of a number of possible changes in Vermont's handling of older juveniles in conflict with the law. Currently, the overwhelming majority of 16- and 17-year-old youth are processed and sanctioned in the adult criminal justice system. However, taking note of recent legislative proposals specifically aimed at altering or ending this practice, as well as an ongoing legislatively sanctioned review and reconsideration of the whole legal framework governing judicial handling of juveniles accused of crimes in Vermont, the state's juvenile justice leadership saw the need for an objective assessment of the probable consequences of shifting some or all these older youth from the criminal to the juvenile justice system. In order to anticipate and plan for these possible changes, they needed projections of the costs each would entail, the services, programming and resources each would call for, and the supporting statutory, policy and practice changes each would necessitate.

### **Research Questions**

To generate information that would be useful to policymakers seeking to anticipate and plan for an array of possible changes in the way older juvenile offenders are processed, served and sanctioned in Vermont, NCJJ sought the best available answers to the following broad questions:

- **How are older youth handled now?** How are 16- and 17-year-old youth in conflict with Vermont law currently being sorted into the juvenile and adult criminal justice systems? How are they being processed? What services do they receive? What resources are available to them in each of these systems?
- **What does the population look like?** What is the size of this group of 16- and 17-year-old youth? What offenses bring them into the system? What other characteristics do they show?
- **How else might they be handled?** What alternative options for sorting, processing, and serving them are possible and practical?
- **What if some or all of this population were shifted between systems?** What would be the size, offense profile and other characteristics of the group of 16- and 17-year-old youth who would be shifted from the adult to the juvenile justice system under each of these alternative options? What would the juvenile system’s population look like as a result?
- **What would shifting this population mean in practice?** What would be the likely cost, resource, programming and other implications of each such shift?
- **What other changes would such a shift require?** What other changes in law, policy and practice would each option require?

## **Strategy**

To answer the above research questions, NCJJ took the following steps:

- **Initial research.** NCJJ conducted preliminary legal and other research to assess the current “boundaries” separating the jurisdictions of the Family and District Courts in Vermont. We assessed Vermont law in terms of the forum

in which proceedings originate, the mechanisms by which they may be shifted from the original forum, and the age at which Family Court jurisdiction over offenders terminates and District Court jurisdiction begins. And we compared and contrasted Vermont's jurisdictional arrangements with those of other U.S. states.

- **Fact-gathering.** NCJJ staff made three information-gathering trips to Vermont, supplemented by numerous telephone and e-mail communications with key system actors, over the five-month period between May and September of 2007. The basic purpose of these efforts was to document policies, practices, procedures, and services for juveniles processed by Family and District Courts, including the roles, responsibilities, and activities of key systems, agencies, and individuals.
- **Survey.** With the cooperation of the Administrative Judge for trial courts, NCJJ conducted an e-mail survey of Vermont trial judges. The survey was designed to assess judicial attitudes regarding current jurisdictional arrangements in Vermont, and to canvas the views of judges regarding possible change options.
- **Data analysis.** In consultation with the Vermont AHS Institutional Review Board and various data-supplying agencies, NCJJ staff requested and received access to data describing Vermont's handling of juvenile and young adult offenders over multiple years. In the course of the project, we processed and analyzed datasets on:
  - Juvenile arrests in Vermont;

- Vermont State's Attorney's filing decisions involving juveniles;
- Vermont Family and District Court handling of juvenile-age cases; and
- Services and sanctions administered to juveniles in the Department of Children and Families (DCF) and the Department of Corrections (DOC).
- **Change options.** Using what was learned from the legal research, information-gathering, and preliminary data analysis, NCJJ staff developed a theoretical continuum of possible jurisdictional change options for Vermont's consideration.
- **Initial focus group.** At a July meeting in Montpelier, NCJJ staff presented these possible change options, along with pertinent background information, to a focus group of some twenty key system representatives convened by the JCC. In the course of that meeting, we worked with the focus group to achieve a consensus as to the change options that were appropriate for more detailed impact-modeling and assessment.
- **Preliminary impact modeling.** Over the next two months, NCJJ developed a rough statistical analytic model for projecting the impact of the change options.
- **Second focus group.** In September, NCJJ staff presented the model to a smaller focus group of key system representatives. At this meeting, group members further refined the consensus regarding change and helped to clarify required resources, costs, and benefits of the various options as well as the legislative, policy, practice, and program changes required to support each option.

- **Model refinement and elaboration.** Using what was learned at the second focus group meeting, NCJJ refined and elaborated the impact projection model. The results of this refinement and elaboration are presented in this report.

## The Current Borders of Vermont's Juvenile Justice System

An examination of the laws that fix the boundaries between the juvenile delinquency and adult criminal justice systems in Vermont—including both laws defining the general scope of Family Court jurisdiction in delinquency matters and transfer laws that permit or require adult criminal handling of certain kinds of cases involving juvenile-age offenders—indicates that Vermont departs radically from the jurisdictional scheme adopted in most other states. Briefly, the exclusive original jurisdiction of the Family Courts is drawn very narrowly in Vermont, and transfer provisions are drawn very broadly. As a result, the proportion of juvenile-age offenders who actually benefit from Vermont's juvenile justice system is unusually small.

The basic structure of Vermont law in this area can be briefly summarized:

- **Original jurisdiction.** Generally, under 33 V.S.A. §5502, the Family Court is given jurisdiction to hear any case involving a “child”—that is, a person under the age of 18—accused of violating a criminal law.
- **Jurisdictional cut-off.** In all but a few exceptional cases, the Family Court's jurisdiction over a youth in a delinquency matter is cut off by 33 V.S.A. §5504 as soon as the youth turns 18.
- **Judicial waiver.** When a youth age 10, 11, 12 or 13 is accused of any of a list of twelve specified felonies, 33 V.S.A. §5506 authorizes the Family Court to waive jurisdiction and transfer the matter to the District Court.
- **Statutory exclusion.** 33 V.S.A. §5506 also contains an “exclusion” provision requiring that, when a youth age 14 or older is accused of one of the specified

felonies, the case must initially be brought in District Court rather than Family Court.

- **Specified offenses.** For both waiver and exclusion purposes, the specified felony offenses are murder, manslaughter, arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, kidnapping, unlawful restraint, maiming, sexual assault, aggravated sexual assault, and burglary into an occupied dwelling.
- **Concurrent jurisdiction.** Under 33 V.S.A. §5505, jurisdiction over all other offenses committed by 16- and 17-year-olds (that is, non-excluded offenses) is concurrent in the Family and District Courts—meaning that a Vermont State’s Attorney has unrestricted authority to “direct-file” a case against a 16- or 17-year-old in District Court rather than Family Court, regardless of offense, and without judicial approval or review.
- **Youthful offender option.** While juvenile-age defendants processed in District Court are for the most part subject to the same criminal sanctions as adults, the Youthful Offender law, 33 V.S.A. §§5505, 5529b—5529e, affords a dual (or “blended”) sentencing option for certain juveniles entering a plea of guilty or nolo contendere in District Court. If they can show that they are (1) not dangerous and (2) still amenable to treatment and rehabilitation in the juvenile system, they may move to have their cases transferred to Family Court for Youthful Offender dispositions. If a transfer is granted, the Family Court imposes both a juvenile disposition and a suspended criminal sentence.

Once the juvenile disposition has been successfully completed, the criminal case is dismissed.

When analyzed against the national background of jurisdictional boundary and transfer laws, Vermont's statutory scheme presents four distinctive features.

**1. The “ceiling” for delinquency jurisdiction in Vermont is very low compared with other states.**

While Vermont may technically be numbered among the 38 states that give their delinquency courts jurisdiction over minors generally, as a practical matter it probably has more in common with the very tiny minority—now just two states<sup>1</sup>—that restrict their delinquency jurisdiction to offenders age 15 and under. This is due to a combination of factors, the most important of which is the state's unrestricted concurrent jurisdiction law for offenders 16 or older, which Vermont prosecutors have employed to sweep most older juvenile offenders (especially 17-year-olds) into the criminal system on a wholesale basis. But stakeholders agree that the general scarcity of secure holding and sanctioning options for older youth in Vermont's juvenile system has also contributed. So has the impossibility of retaining delinquency jurisdiction (except in the relatively rare Youthful Offender cases) beyond a youth's 18<sup>th</sup> birthday. (Only seven other states<sup>2</sup> cut off juvenile court jurisdiction over adjudicated delinquents, for purposes of ongoing supervision and completion of sanctions, at age 18.) All these unique features of Vermont's approach tend to interact with and reinforce one another. As a result,

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<sup>1</sup> New York and North Carolina. Connecticut recently amended its jurisdictional age statute to bring the state into line with the majority. The change will be phased in over a period of years. See the section entitled the Strategic Response to Jurisdictional Change in this report for a more detailed discussion.

<sup>2</sup> Alaska, Arizona (case law), Iowa, Kentucky, Nebraska, Oklahoma, and Tennessee.

Vermont youth effectively begin “aging out” of the juvenile system when they’re only 16.

**2. The scope of the judicial role in transfer decision-making is unusually narrow in Vermont.**

In the nation as a whole, the most common, the best established, and generally the broadest and most flexible mechanism for moving youth across the boundary from the juvenile to the adult criminal system is the judicial waiver. A total of 45 states give juvenile court judges discretion to waive jurisdiction over individual cases involving minors, so that they can be prosecuted in criminal courts. Traditionally, the authority given to judges in this area is very broad. A total of 21 states have “blanket” waiver provisions, authorizing the court to waive any appropriate case, regardless of the offense alleged, at least if the youth involved is above a specified age. Another 22 states authorize judicial waiver for wholesale categories of offenses—such as all felony-grade offenses. The latter group includes several New England states. In Maine, for example, judges may waive jurisdiction over any juvenile, regardless of age, who is accused of a crime punishable by imprisonment of one year or more. New Hampshire law gives juvenile court judges discretion to waive any case involving a youth of at least 15 who is accused of a felony, or a youth of at least 13 who is accused of one of the serious offenses enumerated in the waiver statute. In addition to eligibility thresholds, these and all other judicial waiver laws prescribe broad criteria to guide the waiver decision, and provide notice, hearing and other procedural protections designed to ensure that waiver decision-making is fair, transparent and reviewable on appeal. But they invariably leave considerable discretion to judges, trusting them to make an impartial decision based on

individualized consideration of each case and the juvenile justice system’s capacity to treat and rehabilitate the youth involved.

Vermont, by contrast, may have the nation’s narrowest and least-used judicial waiver law. As noted above, under 33 V.S.A. §5506, the Family Court is given discretion to waive jurisdiction over certain cases—but only those involving accused offenders *under 14* who are accused of one of the twelve very serious “5506 offenses.” In fact, children that young almost never commit offenses that serious. (According to Family Court data, it appears that there was only one such waiver in one recent year.)

**3. Vermont State’s Attorneys may have broader discretionary authority to try older juveniles as adults than prosecutors in any other state.**

Statutes giving prosecutors discretion to decide whether to file charges against some minors in juvenile or criminal court were once a legal novelty (as recently as 1969, only two states had laws of this kind), but they have become more common in the past two decades. A total of 14 other states now have prosecutorial discretion laws—but none is quite like 33 V.S.A. §5505. That statute essentially authorizes prosecutors in Vermont to file any matter involving a 16- or 17-year-old offender in District or Family Court. (The only exception is for cases involving 5506 offenses, which *must* be filed in District Court.) The statute sets neither a minimum offense threshold nor any prescribed decision criteria. By contrast, of the 14 other states with prosecutorial discretion laws, 12 apply only to cases involving selected serious offenses or felony-grade offenses. Even in the two remaining states—Florida and Nebraska, which give prosecutors “blanket” filing authority for some age group—the laws make some attempt to guide prosecutors’ discretion or provide them with a standard for decision-making. In Nebraska, for

example, prosecutors are required to give consideration to the same kinds of enumerated factors that are ordinarily weighed by courts making waiver determinations.

**4. Mechanisms designed to allow for flexibility and individualized consideration within Vermont’s transfer scheme do not seem to be working as intended.**

Most states that dictate criminal handling of certain categories of juvenile offenders, or else place decisions about that handling solely in the hands of prosecutors, also build in judicial corrective or “fail-safe” mechanisms that allow judges to review the circumstances of particular cases and determine whether they should be considered exceptions to the general rule. The most common mechanisms of this kind are “reverse waiver” and “blended sentencing” provisions. Vermont has both, at least on the books. Under 33 V.S.A. §5505, a District Court presented with the case of a 16- or 17-year-old who has been charged as an adult at the prosecutor’s discretion (or that of a 14- or 15-year-old charged with an excluded felony) “may forthwith transfer” the case to Family Court if it chooses. And as has already been noted, under Vermont’s Youthful Offender law (33 V.S.A. §§5505, 5529b—5529e), even youth who are processed in District Court may be able to get juvenile dispositions in individual cases.

However, neither of these mechanisms is very widely used or even understood, and neither can be said to be doing the job it was meant to do. The bare authorization to “forthwith transfer” cases from District to Family Court specifies no grounds for such transfers, and no standards to consult or criteria to use in deciding which cases to transfer and which to retain. If the legislature intended that prosecutors would individualize filing decision, the data does not reflect that this has occurred. So even though, as will be shown more fully later in this report, Vermont State’s Attorneys have generally elected to

file cases against older juveniles in District Court regardless of the seriousness of the offenses involved, almost nothing in the way of a judicial corrective has been applied. District Court data for fiscal 2006 indicate that reverse transfers to Family Court occurred in about 1% of all cases involving 16- and 17-year-olds.

The same pattern emerges in the way the Youthful Offender law has functioned. In theory, the law creates another kind of judicial corrective for individual cases—an alternative to criminal sanctioning for juveniles who can show that they are not dangerous and can still be successfully handled in the juvenile system. There is general agreement among Vermont stakeholders that the Youthful Offender mechanism is not widely used, however. The reasons for this may have something to do with its complexity—blended sentencing laws in other states tend to be simpler to apply and more automatic in their operation than Vermont’s. But a more complete explanation would have to take into account the likelihood that 16- and 17-year-old defendants are simply *not pushing for a judicial corrective* to their wholesale handling in the criminal system—either in the form of transfers to Family Court or blended sentences. The possible reasons for that may lie in the ways they are actually sanctioned (or not sanctioned) in the two systems, a subject that will be explored in the next section.

## **Vermont's Current Handling of Older Juveniles**

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How do Vermont's distinctive jurisdictional boundary, retention and transfer laws play out in practice? Specifically, how do older youth get sorted into the juvenile and adult criminal justice systems, and what happens to them afterwards?

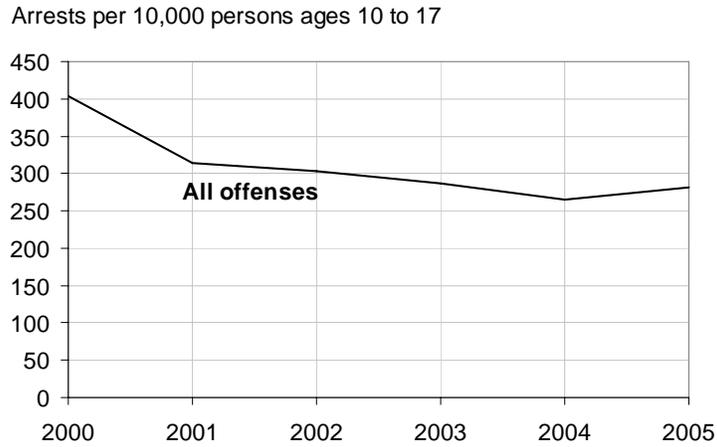
The following simplified summary of the real-life consequences of the current statutory scheme is based on analysis of recent arrest, prosecutor handling, court processing and correctional data as well as interviews with Vermont officials and work with focus groups regarding local practices and procedures. It is necessarily superficial, but it should convey a preliminary sense of who the youth currently on the border between the juvenile and criminal systems are, how and why they are directed to one side or the other, and what is their experience in the two systems.

### **Juvenile Arrests**

Vermont's arrest rate for youth under 18 is well below the national average. In 2005, Vermont's juvenile arrest rate was 283 per 10,000 youth (compared with 638 per 10,000 nationally). Like juvenile arrest rates elsewhere, it has declined substantially in recent years, but Vermont's juvenile arrest rate decline has been even steeper (30% overall) than the national decline (12%). In 2005, Vermont had about 1,000 fewer juvenile arrests than in 2000 (see Figure 1).

As they do elsewhere, youth aged 16 and 17 account for the majority of juvenile arrests in Vermont, but most arrests of 16- and 17-year-olds are for relatively minor offenses. In terms of the standard classifications used in reporting arrests to the FBI for Uniform Crime Reporting purposes, the largest proportions of arrests of 16- and 17-year-olds are for nonviolent property and public order offenses (see Table 1).

**Figure 1  
Vermont Juvenile Arrest Rates, 2000-2005**



**Table 1  
Profile of Vermont Juvenile Arrestees, 2005-2006**

Most serious offense	Arrests of 16- & 17-Year-Olds	Profile	Proportion of All Juvenile Arrests
<b>Total</b>	<b>2,310</b>	<b>100%</b>	<b>60%</b>
<b>Person</b>	<b>350</b>	<b>15</b>	<b>50</b>
Violent	60	3	51
Simple assault	280	12	50
<b>Property</b>	<b>810</b>	<b>35</b>	<b>59</b>
Burglary	130	6	67
Larceny-theft	320	14	56
Vandalism	140	6	50
<b>Drugs</b>	<b>320</b>	<b>14</b>	<b>83</b>
<b>Public order</b>	<b>460</b>	<b>20</b>	<b>51</b>
Disorderly conduct	220	10	58
<b>Other</b>	<b>370</b>	<b>16</b>	<b>78</b>
Liquor offense	220	10	46
DUI	100	4	98

### Filing of Charges

Some incidents involving arrests of 16- and 17-year-olds do not reach the attention of Vermont's State's Attorneys or the Family or District Courts, because they are referred directly by local police departments, county sheriffs and Vermont State

Police to pre-charge “Direct Referral” programs. Otherwise, State’s Attorneys make all charging/filing decisions in these matters at their discretion. They may elect not to act at all (or to return a referral to its source with a pre-charge diversion recommendation), to pursue a case as a delinquency matter in Family Court, or to file criminal charges in District Court. (In an unknown number of cases, State’s Attorneys elect to “split” charges arising from the same incident between the Family and District Courts, so that the same youth appears on both dockets. A primary reason for this is so that the youth may be detained at Woodside.) But for the most part these decisions are not based on detailed information regarding the characteristics or histories of the juveniles involved, as State’s Attorneys have no access to such information at this stage.

In practice, when they do file charges, State’s Attorneys have largely elected the District Court option for older youth. In formally charged cases involving accused offenders of 16 or 17, District Court cases in fiscal 2006 outnumbered those in the Family Court by more than three-to-one. These proportions were not uniform from county to county, however. In fact, they varied from about two District Court cases for every Family Court case involving 16- and 17-year-olds in some counties (Lamoille and Franklin) to as many as six (Grand Isle), seven (Washington) and even twelve (Caledonia) District Court cases for every Family Court case.

Leaving aside the very small proportion of cases involving “5506 offenses” that had to be handled initially as criminal matters—just 14 cases, or about 1% of the total cases involving 16- and 17-year-olds—it does not appear that State’s Attorneys’ choices of forum were driven primarily by offense type or offense seriousness. On the contrary, 86% of the cases filed against 16- and 17-year-olds in District Court that year involved

misdemeanor offenses. And while the aggregate offense profiles for the Family and District Court dockets differ somewhat when cases involving older youth are examined, it does not appear that the more serious cases ended up in the District Courts. For example, 16- and 17-year-olds accused of property and public order offenses had a higher chance of being sent to District Court than those in the same age group accused of person offenses.

In fact, the data suggest that—probably because juvenile jurisdiction ends at age 18—age alone is driving State’s Attorneys’ choices of forum. While cases involving 16-year-olds were sorted more or less evenly between the Family and District Courts, a 17-year-old’s chances of landing in District Court rather than Family Court were about twelve-to-one.

**Table 2  
Delinquency Cases Disposed in Family Court, by Offense, FY 2006**

Most serious offense	Number of Cases			Offense Profile		
	Age 16	Age 17	All Ages	Age 16	Age 17	All Ages
<b>Total</b>	<b>241</b>	<b>55</b>	<b>1,323</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Person</b>	<b>49</b>	<b>14</b>	<b>311</b>	<b>20</b>	<b>25</b>	<b>24</b>
Violent	8	2	37	3	4	3
Simple assault	38	11	260	16	20	20
<b>Property</b>	<b>85</b>	<b>19</b>	<b>482</b>	<b>35</b>	<b>35</b>	<b>36</b>
Burglary	23	2	74	10	4	6
Larceny-theft	19	4	154	8	7	12
Vandalism	16	3	116	7	5	9
<b>Drugs</b>	<b>19</b>	<b>6</b>	<b>69</b>	<b>8</b>	<b>11</b>	<b>5</b>
<b>Public order</b>	<b>61</b>	<b>12</b>	<b>274</b>	<b>25</b>	<b>22</b>	<b>21</b>
Disorderly conduct	21	3	145	9	5	11
Obstruction of justice	22	2	46	9	4	3
<b>Other</b>	<b>27</b>	<b>4</b>	<b>187</b>	<b>11</b>	<b>7</b>	<b>14</b>
Liquor offenses	25	2	174	10	4	13

Counts presented in this table are cases, not charges.

**Table 3  
Criminal Cases Disposed in District Court, by Offense, FY 2006**

Most serious offense	Number of Cases			Offense Profile		
	Age 16	Age 17	Under Age 24	Age 16	Age 17	Under Age 24
<b>Total</b>	<b>301</b>	<b>654</b>	<b>6,561</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>Person</b>	<b>52</b>	<b>97</b>	<b>741</b>	<b>17</b>	<b>15</b>	<b>11</b>
Violent	5	18	109	2	3	2
Simple assault	43	74	584	14	11	9
<b>Property</b>	<b>123</b>	<b>209</b>	<b>1,646</b>	<b>41</b>	<b>32</b>	<b>25</b>
Burglary	12	23	127	4	4	2
Larceny-theft	60	88	681	20	13	10
Vandalism	25	35	279	8	5	4
<b>Drugs</b>	<b>41</b>	<b>102</b>	<b>907</b>	<b>14</b>	<b>16</b>	<b>14</b>
<b>Public order</b>	<b>52</b>	<b>109</b>	<b>1,167</b>	<b>17</b>	<b>17</b>	<b>18</b>
Disorderly conduct	23	54	466	8	8	7
Obstruction of justice	20	40	577	7	6	9
<b>Other</b>	<b>33</b>	<b>137</b>	<b>2,100</b>	<b>11</b>	<b>21</b>	<b>32</b>
Liquor offenses	9	72	559	3	11	9

Counts presented in this table are cases, not charges.

### Post-Filing Diversion

The filing of charges in either Family or District Court does not preclude informal handling of a case, as post-charge diversion options are available in both systems.

Pursuant to 3 V.S.A. §§163-164, court diversions programs have been set up in every county to resolve cases involving both juvenile and adult offenders through community service, restitution, and other measures in lieu of trial or adjudication. Programs are run by local community-based organizations and are subject to the general administrative oversight of the Office of the Attorney General. However, the “gatekeeper” for diversion in each county is the State’s Attorney, who not only develops general eligibility criteria but also refers individual cases for diversion. Family Court data indicate that about 18% of cases involving 16- and 17-year-olds in fiscal 2006 were diverted post-filing. But a much higher proportion of cases involving 16- and 17-year-olds —about 37%—were diverted from District Courts in the same year.

## **Case Processing**

There are differences between the Family and District Courts in the way cases involving 16- and 17-year-olds are handled and in the ultimate dispositions they receive. In practice, Family Court handling of those cases that are not diverted following an arraignment-like initial hearing tends to be somewhat more formal and resource-intensive. Counsel is always assigned, and sometimes a non-family guardian ad litem as well. The youth's parents/guardians are necessary parties, and so is the Department for Children and Families if the youth is found delinquent and the case proceeds to a disposition hearing—in which case DCF must prepare a disposition report containing an assessment of the youth's needs and resources and a detailed treatment plan and recommendations. By contrast, in District Court a substantial proportion of cases involving 16- and 17-year-olds, even when not diverted, are handled with diversion-like procedural informality. Analysis of fiscal 2006 District Court data suggests that 13% of non-diverted cases were handled as “fine-only” matters, meaning that they were in all likelihood resolved by pleas at the first appearance and that defendants were never assigned counsel. In such cases, it should be noted, unrepresented youth are pleading guilty to criminal charges—and thereby acquiring criminal records—without necessarily being informed of the long-term consequences.

## **Temporary Holding**

Vermont has an exceptionally limited capacity for holding juveniles securely on a temporary basis, while their cases are being resolved or their longer-term placements are being arranged. A total of 16 secure beds are available, for boys and girls combined, in the whole state, all in the Detention Program of the Woodside Juvenile Rehabilitation Center. Because all of Vermont's secure detention beds are located in one facility,

moreover, they are of limited usefulness to much of the state—particularly in emergency situations. A total of 16 additional short-term stabilization beds are available in three facilities located elsewhere (five for boys, seven for girls, and four for boys and girls combined), but these are classified “staff-secure,” meaning that the facilities are not locked.

Temporary holding of youth being processed in District Court is also problematic. Minors in the 16- and 17-year-old age group charged in District Court with *felonies* may be jailed, but this is rarely done. Pursuant to an interdepartmental DOC-DCF agreement authorized by 33 V.S.A. §5801(d), minors charged in District Court with misdemeanors may be temporarily held in the Detention Program at Woodside, but only when Woodside’s detention population is below a certain level and contains no children under 13. Because this option is not always available, 16- and 17-year-olds charged with misdemeanors must occasionally be temporarily lodged in “alternative detention staffed by DOC personnel”—such as motel rooms. In fiscal 2006, there were 15 such alternative lodgings, involving 14 youth, with an average stay of about 78 hours.

## **Dispositions**

The primary dispositional choices in delinquency cases handled in Family Court are DCF probation and DCF custody. Youth are typically placed in DCF custody when they represent a risk to the public or cannot otherwise successfully complete their disposition plans or have their treatment needs met. Of those Family Court cases involving 16- and 17-year-olds that were not diverted and/or dismissed in fiscal 2006, about half were ordered into DCF custody (with or without probation), and about half received DCF probation.

Youth in DCF custody may be kept in their family homes, but are most often placed elsewhere at the discretion of DCF, without further court order—in foster homes, in any of about a dozen group homes and residential facilities under contract with DCF around the state, in a roughly equal number of out-of-state facilities with which DCF currently has contracts, or in the Woodside Juvenile Rehabilitation Center. Average lengths of stay in these out-of-home placements vary, but tend to be at least a year.

Youth who are sentenced in District Court may receive a variety of sanctions, some of which may overlap. Fiscal 2006 District Court data on cases involving 16- and 17-year-olds indicate that about 42% were diverted and/or dismissed, 27% were ordered to DOC probation, 13% were required to pay fines or costs only, and about 11% received sentences that involved some form of incarceration. For the most part, incarcerative sentences could not have involved prison terms: DOC data show that as of the end of fiscal 2006, only 5 (3%) of the 140 youth age 16-17 under departmental supervision were actually imprisoned. Of the rest, 132 (94%) were on probation and 3 (2%) were on “pre-approved furlough” (a probation-like status that allows a person sentenced to a correctional program to forego actual incarceration). Of youth in this age group who were on probation, about 90% had been assigned to “low field supervision status” on the basis of a minimal DOC risk screening.

## **The Range of Jurisdictional Change Options**

As the preceding brief sketch makes clear, Vermont's approach to older juveniles (1) departs sharply from practice in most other states and (2) has at least some effects that no one could have intended. Arguably, Vermont youth are now being sorted into the criminal justice system on the basis of no clear or consistent principle. Their characteristics and needs have not been systematically investigated. Their offenses are not generally serious. And they are hardly being supervised or sanctioned at all. Assuming that this state of affairs is unsatisfactory, where could one begin to change it?

To help NCJJ frame a continuum of change options that might make sense for Vermont, a focus group of Vermont juvenile and criminal justice professionals was assembled in Montpelier on July 12, 2007. The focus group included representatives of DCF and DOC, the Vermont General Assembly, the Vermont Judiciary, the State's Attorneys and the Office of the Defender General, as well as law enforcement, local diversion and treatment providers, and other pertinent agencies and organizations selected by the JJC. The group was given background information on Vermont's current approach and presented with a variety of jurisdictional change options. They were asked not only to help NCJJ staff understand the likely impact of each change option on Vermont's practices, resources, programs, and costs, but to choose particular change options for more detailed impact-modeling and assessment.

### **The Need for Change**

The group also addressed the broader question of the need for change. And while there was no perfect agreement regarding what should be done to change Vermont's current approach, everyone seemed to acknowledge that some departure from the status

quo was desirable. Other individual and group discussions with key actors conducted during the course of this study supplemented and reinforced this view. From these sources, a very basic case for change in Vermont emerged. The current system, according to this consensus view, is not the product of a considered choice, but a series of accidents and unintended interactions. It does not operate fairly or consistently. It seems to be failing older juveniles. And it may be failing the public as well.

***The current system was not intentionally created.***

The state did not enact its package of jurisdictional age, retention, transfer and blended sentencing laws all at once, but at various times and for various reasons. It seems clear that in some cases, these laws have interacted—with one another and with Vermont’s other policies and organizational arrangements—in ways that were not foreseen. For instance, many observers agreed that the elimination of the Family Court’s retention power in the 1990s had interacted with other laws and policies—especially the broad discretion given to prosecutors to handle older youth as they saw fit and the long stays that youth in custody typically spent in DCF placements—to erode the Family Court’s delinquency jurisdiction far beyond what was probably intended at the time of the change.

***The current system does not operate fairly or consistently.***

Youth appear to be going into the adult system for the wrong reasons or for no reasons. Neither individual youth characteristics nor even offense seriousness seem to be primary factors in the decision. District Court tends to be “the path of least resistance” for older youth, rather than an individualized choice. The juveniles themselves are not resisting—but only because they are typically short-sighted regarding the consequences

of criminal conviction (and may often be unrepresented by counsel as well). And in all this the foundational principle of juvenile justice—that young people’s immaturity, underdeveloped sense of responsibility, susceptibility to negative influences and outside pressures, unformed characters, and greater capacity for rehabilitation and redemption call for a different kind of justice response—seems to have been forgotten.

***The current system is failing older juveniles.***

Older youth are essentially “disappearing” into a system that is not designed or equipped to understand their needs, let alone meet them. While a 2003 survey of risk behavior administered to Community High School of Vermont students indicates alarming differences between school-age youth in DOC custody and other Vermont high school students in such areas as drug use, driving under the influence, suicide attempts, and precocious sexual activity, DOC does not collect detailed information on most of its 16- and 17-year-olds, who are “a drop in a much larger bucket” for the agency. The agency understandably lacks focus, specialization, and expertise in this area, which will always be peripheral to its main mission.

***The current system may be failing the public as well.***

Although a specific comparison of the long-term public safety outcomes of juvenile and criminal handling of Vermont youth was far outside the scope of this study, the research consensus now indicates that transfer laws that criminalize juvenile offending are not effective in reducing or preventing violence generally, and in fact actually tend to increase rates of violence among transferred youth.<sup>3</sup> Because “juvenile”

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<sup>3</sup> Task Force on Community Preventive Services. “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review.” *American Journal of Preventive Medicine* 2007;32(4S):S7-S28.

and “criminal” handling mean different things in different states, research conducted in one state is not necessarily applicable in another. But at this point in the nation’s experiment with transfer laws, any approach that involves large-scale transfer of whole age groups of non-serious offenders must be regarded with suspicion from the perspective of public investment and public safety.

## Change Options to be Explored

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Following a day's discussion and review of background information on Vermont's jurisdictional choices, the focus group recommended that three basic jurisdictional change options be further explored:

- **Option One.** First, the focus group asked NCJJ to explore the consequences of changing to a system in which all cases against under-18 youth would originate in Family Court. From there, they could be transferred to District Court, but only with judicial approval following a discretionary waiver hearing. Although the group was skeptical about the possibility of actually bringing about such a change, they agreed that this “waiver-only option” would be likely to have the largest system impact in terms of costs, realignments, and processing disruptions, and thus would serve as an outer limit to NCJJ's range of estimates.
- **Option Two.** The focus group also asked for a projection of the impact of changing to an arrangement like the waiver-only one, but with exceptions for cases involving alleged offenses listed in 33 V.S.A. §5506. In other words, while most under-18 youth would be processed in Family Court (or else transferred to District Court following an individualized waiver hearing in Family Court), an exception would be made as under current law for the small minority of offenders accused of 5506 offenses—whose cases would instead originate in District Court. (Presumably, even for the latter group, a “reverse transfer” to Family Court would be possible in individual cases, as under current law.)

- **Option Three.** Finally, the focus group wanted information on the impact of changing to a system in which (1) cases involving misdemeanors originate in Family Court and can be transferred only by judges, (2) cases involving 5506 offenses originate in District Court and (3) a third category of cases involving 16- and 17-year-olds accused of felony-grade offenses may originate in either forum, at the discretion of prosecutors.

## Quantitative Approach to Modeling Jurisdictional Change Impacts

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NCJJ employed both qualitative and quantitative methods to project the likely impact of jurisdictional change options as directed by the focus group. To explore the quantitative dimensions of change, NCJJ staff requested and reviewed recent data collected by the Vermont State Police, State’s Attorneys, Court Administrator’s Office, DCF and DOC regarding the handling of juveniles and young adults under current law. Overall, the court dataset emerged as the best source of the kinds of information needed to estimate change impacts. Once it had been restructured to suit the needs of the project, the court dataset provided straightforward indicators of the likely court and agency workload shifts to be expected from various change options. And because the dataset allowed us to see demographic, offense, and disposition information for 16- and 17-year-olds handled as juveniles and adults under current law, it provided valuable clues as to the other changes that may be expected as case volume shifts between systems.

The court file provided to NCJJ included information on cases closed between January 1, 2005 and December 31, 2006, and covered all District Court cases in which the offender was younger than 24 years old on the filing date as well as all Family Court delinquency cases. We restructured the data to change the unit of count from “charges” to “cases.”<sup>4</sup> We also restricted our analysis to cases disposed in Fiscal Year 2006 (between 7/1/2005 and 6/30/2006). For each case, we identified the charge associated with the most severe disposition result. Once this charge was identified, we captured all

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<sup>4</sup> Vermont primarily organizes its case processing data at the charge level, but charge-level information is less useful for workload measurements than information at the case level. A “case” represents the disposition of a court referral for one or more offenses charged on the same day. A case involving multiple charges is characterized by the charge that receives the most serious or restrictive disposition.

of its case processing details, such as referral date, disposition date, demographic characteristics of the person charged, and services ordered as part of the case disposition.

Using this restructured court data file, NCJJ staff employed a retrospective analysis approach to estimate change impacts for purposes of this project. In other words, we used information about the recent past to generate a rough prediction of the future. By showing how past distributions of cases, workloads and age/offense profiles in the juvenile and adult court systems would have differed if the jurisdictional ground rules had been different, we arrived at approximations of the distribution/workload/profile changes that might be expected in the future, if those ground rules actually were to change.

The series of simplified tables will illustrate our approach on the most basic level. Table 4a shows the volume of delinquency cases involving 16- and 17-year-olds that were disposed in Family Court during FY 2006, as well as the total delinquency cases disposed regardless of age. Table 4b shows the volume of criminal cases involving 16- and 17-year-olds that were disposed in District Court during the same period. Suppose the Family Court had handled all the cases involving 16- and 17-year-olds that were disposed during FY 2006, and the District Court had handled none? Table 4c shows how the Family Court's workload would have looked in that case. The "Percentage Increase" column indicates that shifting all of these youth from District to Family Court would have increased the Family Court's delinquency workload by 72%.

**Table 4a  
Delinquency Cases Disposed in Family Court,  
FY 2006**

Age 16	Age 17	All Ages
241	55	1,323

**Table 4b  
Criminal Cases Disposed in District Court,  
FY 2006**

Age 16	Age 17	Both Ages
301	654	955

**Table 4c  
Adjusted Family Court Delinquency Case  
Workload**

Age 16	Age 17	All Ages	Percent Increase*
542	709	2,278	72%

\* The increase between the known delinquency workload and the adjusted delinquency workload.

## Jurisdictional Change Option One: A Waiver-Only System

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Instead of the current arrangement, in which judges are almost never called upon to decide whether young offenders should be tried as criminals, Vermont could place such decisions in judicial hands only. In fact, there are seven states in which judicial waiver is the only mechanism by which a juvenile-age offender may be transferred to criminal court.<sup>5</sup> In order for Vermont to join those states, legislators would have to rewrite 33 V.S.A. §5506(a), which authorizes Family Courts to waive jurisdiction over only a narrow category of cases (involving very young, very serious offenders), and instead make waiver available in a broad range of cases. Minimum age and offense thresholds for waiver would have to be set, if desired, and decision criteria specified. At the same time, both 33 V.S.A. §5505(b), which mandates criminal handling for one class of cases, and 33 V.S.A. §5505(c), which authorizes prosecutors to exercise broad discretion in filing others, would have to be repealed.

In a nutshell, the resulting system would have the following features:

- *No* cases are statutorily *excluded* from Family Court jurisdiction.
- State's Attorney has *no discretionary power* to file cases against juveniles in District Court initially.
- Family Court *may waive individual cases* to District Court, following a State's Attorney's motion and a transfer hearing.

The fundamental advantages of such a system for making transfer decisions are obvious: individualization, transparency, and reviewability. Criminal handling is never a

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<sup>5</sup> Hawaii, Kansas, Maine, Missouri, New Hampshire, Tennessee, and Texas.

default or path-of-least-resistance option, always a deliberate choice based on impartial consideration of the circumstances of the individual youth. Both sides have a right to be heard on the issue, to appeal to known standards, to show exceptional circumstances. Judges make decisions on the basis of a record, and explain their reasoning. If they should err, their errors can be reviewed and redressed.

Unfortunately, the system has obvious disadvantages as well. Waiver-only systems feature considerable procedural formality—motions, hearings, opinions, and appeals.<sup>6</sup> Results may be inconsistent and unpredictable from a policymaking point of view. Partly for that that reason, any general deterrence message that may be associated with inflexible and categorical transfer laws is entirely lost.

The focus group predicted that the waiver-only option would require far more transfer hearings—which are currently almost unheard of in Family Court. Conceivably, these hearings “could stop the Family Court in its tracks,” as one participant put it. On the other hand, there was some question as to whether, at least in some counties, this option would involve anything more than moving transfer hearings—and judicial resources—from District Court to Family Court. (Under current law, accused juvenile-age offender charged in District Court can seek to have their cases transferred to Family Court, and hearings on these transfer motions are said to be frequent in some counties but not others.)

According to a prosecutor in the focus group, there would probably be a large volume of waiver motions immediately following a change in the transfer laws, as State’s

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<sup>6</sup> Under its current statutory scheme, Vermont waiver hearings would not even be informed by DCF assessments, since DCF is not made a party to a delinquency proceeding until after the merits have been decided.

Attorneys accustomed to handling older youth in District Court would aggressively seek to bring about the same result through waiver, at least in cases that they would regard as serious. This tendency would likely diminish over time, however. Nationally, the proportion of juvenile cases in which prosecutors *seek* waiver is not known, but waiver is *granted* in only about 1% of petitioned delinquency cases.<sup>7</sup> If Vermont Family Court judges were to waive jurisdiction at the national rate, it would mean only about 23 cases waived per year. But it should be remembered that the national waiver rate is derived mostly from states that have categorically excluded many serious cases from juvenile court jurisdiction—making it less likely that waiver is relied on as a primary transfer mechanism.

Responses to a judicial survey conducted for this project offer some clues to how a waiver-only system might work in practice.<sup>8</sup> About a third of Vermont’s trial judges submitted responses to the survey, which sought information regarding their general positions on jurisdictional change as well as their specific views on transfer decision-making. The judges generally endorsed the notion of a system in which youth are transferred primarily (if not exclusively) on an individualized basis, following a hearing before a judge. In ranking factors that should influence the transfer decisions, the judges chose age as the most important factor, followed by offense characteristics, offense level, and prior record, in that order. They cited a number of other changes that would be needed in the event of a change to a waiver-only system, including more judge/court time for hearings, more attorneys and guardians ad litem, clear decision guidelines, and a

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<sup>7</sup> Snyder, H. and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

<sup>8</sup> The survey is reproduced in Appendix A.

“neutral” screening or evaluation tool<sup>9</sup> to gather pre-hearing information relevant to the waiver decision. Finally, when asked how Vermont’s juvenile justice system might need to change to accommodate more 16- and 17-year-olds, most specified that the system would need more “teeth” (especially for noncompliant youth) and the power to retain jurisdiction beyond age 18.

### Impact of Option One on Court Workloads and Case Profiles

How would a change like this impact court workloads in the juvenile system? What kinds of offenders would be shifted, at least initially, from District to Family Courts? Table 5 shows both the volume and offense profiles of disposed cases involving older youth in the Family and District Courts during FY2006.

Most serious offense	Delinquency Cases Disposed in Family Court, FY 2006			Criminal Cases Disposed in District Court, FY 2006		
	Age 16	Age 17	All Ages	Age 16	Age 17	Both Ages
<b>Total</b>	<b>241</b>	<b>55</b>	<b>1,323</b>	<b>301</b>	<b>654</b>	<b>955</b>
<b>Person</b>	<b>49</b>	<b>14</b>	<b>311</b>	<b>52</b>	<b>97</b>	<b>149</b>
Violent	8	2	37	5	18	23
Simple assault	38	11	260	43	74	117
<b>Property</b>	<b>85</b>	<b>19</b>	<b>482</b>	<b>123</b>	<b>209</b>	<b>332</b>
Burglary	23	2	74	12	23	35
Larceny-theft	19	4	154	60	88	148
Vandalism	16	3	116	25	35	60
<b>Drugs</b>	<b>19</b>	<b>6</b>	<b>69</b>	<b>41</b>	<b>102</b>	<b>143</b>
<b>Public order</b>	<b>61</b>	<b>12</b>	<b>274</b>	<b>52</b>	<b>109</b>	<b>161</b>
Disorderly conduct	21	3	145	20	40	60
Obstruction of justice	22	2	46	23	54	77
<b>Other</b>	<b>27</b>	<b>4</b>	<b>187</b>	<b>33</b>	<b>137</b>	<b>170</b>
Liquor offenses	25	2	174	9	72	81

Counts presented in this table are cases, not charges.

<sup>9</sup> DCF has recently adopted the Youth Assessment Screening Instrument (the YASI), which assesses both risks and needs. A pre-screening tool is used for all cases. Depending upon the risk level, a more comprehensive screening tool may be employed as well.

The hypothetical effect of shifting District Court cases involving 16- and 17-year-olds to the Family Court’s docket is shown in Table 6. As can be seen, such a shift would have increased the Family Court’s overall delinquency workload by 72%. Bear in mind, however, that the increase to the Family Court’s *overall* workload would have been much smaller. Although NCJJ did not analyze data on the other kinds of cases handled by Vermont’s Family Courts—including domestic matters (divorce, annulments, etc.), child support, child abuse and neglect, unmanageable cases, mental health commitments, etc.—there were a reported total of 19,680 Family Court case dispositions of all kinds during fiscal 2006.<sup>10</sup> Accordingly, the addition of all the criminal cases involving 16- and 17-year-olds to the Family Court’s docket that year would have increased its overall workload by less than 5%.

**Table 6**  
**Impact of Moving all 16- and 17-year-olds from District to Family Court**

Most serious offense	Adjusted Family Court Delinquency Case Workload			Percent Increase*
	Age 16	Age 17	All Ages	
<b>Total</b>	542	709	2,278	72%
<b>Person</b>	101	111	460	48
Violent	13	20	60	62
Simple assault	81	85	377	45
<b>Property</b>	208	228	814	69
Burglary	35	25	109	47
Larceny-theft	79	92	302	96
Vandalism	41	38	176	52
<b>Drugs</b>	60	108	212	207
<b>Public order</b>	113	121	435	59
Disorderly conduct	41	43	205	41
Obstruction of justice	45	56	123	167
<b>Other</b>	60	141	357	91
Liquor offenses	34	74	255	47

Counts presented in this table are cases, not charges.  
\* The increase between the known delinquency workload and the adjusted delinquency workload.

<sup>10</sup> Vermont Judiciary. *Annual Statistics: Family Court of Vermont, Summary for year ending June 30, 2006*. Available online: <<http://www.vermontjudiciary.org/stats/2006-family.pdf>>.

From Table 6 it is also possible to see how shifting all cases involving older youth from District to Family Court would not only expand but change the nature of the Family Court's delinquency workload. First, and most obviously, the typical Family Court delinquent would *age* considerably. Currently, 16- and 17-year-olds account for just one-fifth (22%) of the delinquency workload in Family Court. But if the older juveniles in District Court became the Family Court's responsibility, they would account for 55% of the Family Court's adjusted delinquency workload.

The typical Family Court case would involve different offense types as well. Drug and larceny-theft cases would make up a larger proportion of the cases handled—together they would account for 30% of the overall delinquency workload increase. As a proportion of the Family Court's adjusted workload, drug cases would rise from 5% to 9%.

### **Dispositional Impact of Option One**

There are two basic ways of using the existing court data to shed light on *what would be likely to happen* to the 16- and 17-year-olds who would be shifted to the original jurisdiction of the Family Court under the waiver-only jurisdictional option—what sorts of dispositions they would receive, how they would need to be served, and what changes in staffing and programming might be called for to accommodate them. The first method is based on an examination of what the *Family Court* has done with *similar* juveniles. The second is based on what the *District Court* in fact did with *these* juveniles.

Table 7 illustrates the first approach. In the left-hand column, it shows the primary dispositions actually received in Family Court during fiscal 2006 by 16- and 17-year-olds. The second column shows, for the sake of comparison, dispositions received

by juveniles in general. (Dispositions aren't exclusive, so they don't add up to the total at the top.) The third column, on the other hand, does not show real dispositions handed down in District Court—instead it applies the Family Court's dispositional approach to the actual District Court cases. It assumes that the Family Court would respond to similar age/offense combinations consistently, and uses that assumed consistent pattern of dispositional tendencies to estimate the proportion of cases from District Court that would have received specific dispositions. ( The next two columns show, for each disposition, how many added cases would receive that disposition according to these assumptions, and the final column shows the percentage by which the total number of cases receiving that disposition in Family Court would increase.

**Table 7**  
**Estimated New Service Workloads Based on Family Court**  
**Dispositional Tendencies**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Total Cases Disposed	296	1,323	955	1,251	2,278	72%
Diversion	53	374	121	174	495	32
Probation Only	119	486	402	521	888	83
DCF Custody	128	479	506	634	985	106

\* The increase between the known delinquency workload and the expected delinquency workload.

Of course, Family Court judges would object that they don't respond to similar age/offense combinations consistently," or at least don't mean to do so. That is not the purpose of juvenile justice disposition-making—which is supposed to be primarily need-based rather than offense-based. However, information on the needs of 16- and 17-year-olds in the adult system is simply not available. Some proxy for individual needs and circumstances must be used for prediction purposes, and age/offense information is the best available stand-in. Moreover, it is likely that there is some broad consistency in the dispositional treatment of particular age/offense combinations, since youth in each age/offense group are likely to have other needs and circumstances in common.

Granting the assumptions that underlie this approach to service impact projection, it will be seen that moving all criminal court cases involving 16- and 17-year-olds from District to Family Court would have increased the number of delinquency cases receiving probation only by 83%. Delinquency cases receiving custody dispositions—whether or not they receive probation as well—would more than double. This is another way of saying that cases in the District Court tended to be the kinds of cases (in age/offense terms) that receive probation and custody orders in Family Court. By comparison, they tended not to be the kinds of cases (again, in terms of age and offense) that are usually diverted in Family Court—so the expected increase in diversions, if these cases were added to the Family Court docket, would be only 32%.<sup>11</sup>

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<sup>11</sup> Note that NCJJ's analysis of Family Court dispositional patterns takes age *and* offense into account. In other words, it does not simply calculate the overall percentage of cases that currently receive a particular disposition in Family Court, and apply that percentage to the expanded Family Court caseload. But one might also employ this method, dispensing with the offense information and simply assuming that the Family Court would dispose of the expanded group of 16- and 17-year-olds in the same manner—and in the same proportions—in which it currently disposes of 16- and 17-year-olds, regardless of offense. This simpler approach yields slightly different results: the overall number of cases that would be expected to

There is another way to estimate what array of dispositions these cases would receive in Family Court, and that is to look at what dispositions they actually received in District Court. The assumption behind this method is that, though the two courts have different purposes and orientations, there would still be some consistency in the way they responded to an identical group of young offenders—at least where they have similar dispositional options available to them. In fact, a straight probation order can be thought of as the same basic type of sanction, whether it is in the adult or juvenile system, and diversion generally *is* the same sanction regardless of the referring court. Accordingly, a more accurate way of estimating Family Court dispositions for newly added cases involving 16- and 17-year-olds may be simply to count the parallel dispositions received in District Court.

Table 8 takes this approach. Here we see that, although cases involving 16- and 17-year-olds were not often diverted at the Family Court level, and cases of the *type* handled in District Court were even more rarely diverted in Family Court—so that we were led to believe that only 121 additional cases would be diverted under the analysis based on Family Court-level practice in similar cases—in fact more than a third of these cases were diverted at the District Court level. If we assume that the same cases would be diverted at the Family Court level, it greatly increases the number of diversion cases we would expect in the event of a shift—from 121 to 355 cases. Conversely, cases of the age/offense types handled in District Court received probation-only dispositions in Family Court more than 40% of the time—but the same cases actually received probation

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receive probation only would increase by 79%, the number of custody cases would increase 86%, and the number of diverted cases would increase 46%.

in District Court just 27% of the time. That greatly lowers our estimate of the number of new probation-only cases that would result from a shift—from 402 to 262.

**Table 8  
Estimated New Service Workloads Based on District Court Dispositions**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Diversion	53	374	355	408	729	95%
Probation	164	674	262	426	936	39

Counts are cases, not charges.

\* The increase between the known delinquency workload and the expected delinquency workload.

What about District Court sentences involving incarceration of 16- and 17-year-olds? Although about 11% of these cases resulted in a sentence involving some kind of incarceration, it is difficult to form an accurate picture of what this means from the court data alone, and even more difficult to translate it into an equivalent form of Family Court disposition. In any case, it is clear that almost none of these incarcerations involved the kind of long stays that are typical of residential care in Vermont’s juvenile system. At the end of fiscal 2006, only five 16- and 17-year-olds were imprisoned in DOC facilities.

## Jurisdictional Change Option Two: Waiver With Exclusions

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A somewhat more likely change, according to the focus group consensus, would be to an arrangement like the waiver-only one, but with exceptions for the small minority of youth accused of the serious offenses listed in 33 V.S.A. §5506—whose cases would instead originate in District Court as under current law. Apart from these exceptional cases, the “waiver with exclusions” option would require that under-18 youth either be (1) processed in Family Court or else (2) transferred to District Court only with a Family Court judge’s approval, following a hearing.

In a nutshell, the resulting system would have the following features:

- All cases except 5506 cases originate in Family Court, and *may be waived to* District Court only on an individual basis, following State’s Attorney’s motion and a transfer hearing.
- *5506 offenses* are statutorily excluded from Family Court jurisdiction.
- State’s Attorney has *no discretionary power* to file other cases against juveniles in District Court initially.

The waiver-plus-exclusions arrangement is by far the most common nationally. A total of 25 states have settled on this juvenile transfer scheme—in which most cases involving juveniles cannot reach the criminal courts except after formal, individualized consideration, while a relatively small but symbolically important minority get there automatically. There is probably a reason for this. In Vermont, for example, the focus group recognized that the waiver-plus-exclusions option may not be fundamentally very different from the waiver-only option, because the vast majority of cases involving

juveniles of any age fall far below the §5506 threshold of seriousness. But politically, the change would nevertheless be far easier to make—because it would forestall certain emotional objections associated with exceptional cases.

The arrangement may also be more stable and workable in the long run. Experience in other states has shown that, when the hard cases are taken out of the mix by an exclusion provision, resort to cumbersome judicial waiver procedures is seldom necessary. That may be why a state like Pennsylvania, which has a waiver-plus-exclusions transfer scheme, sees fewer than half a percent of its formally processed delinquency matters waived to criminal court. Most system actors there—including prosecutors as well as judges—have come to understand that the juvenile system is the appropriate forum for handling offenders of juvenile age; that the legislature has already provided for the anomalous cases that are exceptions to the general rule; and that motions to waive should therefore be rarely brought and even more rarely granted.

The following series of tables give a sense of how a change to a waiver-with-exclusions arrangement might impact Family Court workloads, what kinds of offenders would be shifted from District to Family Courts, and what sorts of dispositions they would be likely to receive. However, it is not necessary to discuss them in detail, because they hardly differ from the previous set of tables. Only 14 cases against 16- and 17-year-old youth involved 5506 offenses in fiscal 2006. (These included five aggravated assault cases, three violent sex offense cases, two homicide cases, two robbery cases, and one burglary case.) Accordingly, the number of youth being shifted from one system to the other in these tables has simply been reduced from 955 to 941.

**Table 9**  
**Delinquency and Non-5506 Offense Cases Involving Older Youth**  
**in Family and District Courts**

Most serious offense	Delinquency Cases Disposed in Family Court, FY 2006			Non-5506 Cases Disposed in District Court, FY 2006		
	Age 16	Age 17	All Ages	Age 16	Age 17	Both Ages
<b>Total</b>	241	55	1,323	298	643	941
<b>Person</b>	49	14	311	49	87	136
Violent	8	2	37	2	9	11
Simple assault	38	11	260	43	74	117
<b>Property</b>	85	19	482	123	208	331
Burglary	23	2	74	12	22	34
Larceny-theft	19	4	154	60	88	148
Vandalism	16	3	116	25	35	60
<b>Drugs</b>	19	6	69	41	102	143
<b>Public order</b>	61	12	274	52	109	161
Disorderly conduct	21	3	145	20	40	60
Obstruction of justice	22	2	46	23	54	77
<b>Other</b>	27	4	187	33	139	172
Liquor offenses	25	2	174	9	72	81

Counts presented in this table are cases, not charges

**Table 10**  
**Impact of Moving 16- and 17-year-old Non-5506 Offense Cases**  
**from District Court to Family Court**

Most serious offense	Adjusted Family Court Delinquency Case Workload			Percent Increase*
	Age 16	Age 17	All Ages	
<b>Total</b>	539	698	2,264	71%
<b>Person</b>	98	101	447	44
Violent	10	11	48	30
Simple assault	81	85	377	45
<b>Property</b>	208	227	813	69
Burglary	35	24	108	46
Larceny-theft	79	92	302	96
Vandalism	41	38	176	52
<b>Drugs</b>	60	108	212	207
<b>Public order</b>	113	121	435	59
Disorderly conduct	41	43	205	41
Obstruction of justice	45	56	123	167
<b>Other</b>	60	143	359	91
Liquor offenses	34	74	255	47

Counts presented in this table are cases, not charges.

\* The increase between the known delinquency workload and the adjusted delinquency workload.

**Table 11**  
**Estimated New Service Workloads Based on Family Court Dispositional Tendencies for Non-5506 Cases**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Total Cases Disposed	296	1,323	941	1,237	2,264	71%
Diversions	53	374	121	174	495	32
Probation Only	119	486	394	513	880	81
DCF Custody	128	479	505	633	984	105

\* The increase between the known delinquency workload and the expected delinquency workload.

**Table 12**  
**Estimated New Service Workloads Based on District Court Dispositions for Non-5506 Cases**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Diversions	53	374	355	408	729	95%
Probation	164	674	256	420	930	38

Counts are cases, not charges.

\* The increase between the known delinquency workload and the expected delinquency workload.

As noted above, forming an accurate picture of the respective courts' disposition patterns with respect to secure placement/incarceration is difficult from the court datasets alone. But again, the rarity of secure placement/incarceration in Vermont would mitigate against any large impact from the shift contemplated here. Even more importantly, the cases that would be retained in the adult system would be precisely those most likely to require secure holding. Of the 14 cases involving 16- and 17-year-olds charged with 5506 offenses in fiscal 2006, nine received some form of post-disposition incarceration.

## **Jurisdictional Change Option Three: Restore Misdemeanor Cases to Family Court**

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The third option NCJJ was asked to explore would essentially narrow the scope of the State's Attorney's discretionary authority to file any case against a 16- or 17-year-old in District Court—making it applicable only to cases involving *felony-grade* offenses. Misdemeanor cases would have to originate in Family Court.

This option was little discussed in the focus group's July meeting. However, after being presented with further information on the option at a subsequent meeting in September, along with preliminary data on its likely consequences, the reconvened focus group clearly signaled a strong preference for it, as the most practical and politically workable of the change options.

The scheme that would result from this change would be the following:

- Most cases—including all cases involving misdemeanors—originate in Family Court and can only be waived to District Court on an individual basis, following a State's Attorney's motion and a transfer hearing.
- Cases involving 5506 offenses continue to be excluded from Family Court jurisdiction, and must be filed in District Court.
- Handling of cases involving 16- and 17-year-olds accused of other felonies is the same as under current law—that is, they may originate in either forum, at the discretion of prosecutors, but will presumably continue to be filed in District Court.

Eight other states<sup>12</sup> have jurisdictional transfer systems resembling this one—in which some cases can only be transferred to criminal court by judges on an individual basis, others are categorically excluded, and still others are left to the filing discretion of prosecutors.

From Vermont’s perspective, there would be several considerable advantages to this arrangement. First, it squarely addresses the problem, or at least the bulk of the problem, because misdemeanants make up 86% of all 16- and 17-year-olds being handled in District Court. Second, it targets only the less serious offenders, who are likely to be more easily accommodated in the juvenile system. Third, because it retains existing transfer arrangements for serious cases, it will be that much easier to sell politically. And fourth, it will probably avoid the problems, costs and delays associated with frequent waiver motions and hearings: State’s Attorneys would have little incentive to bring transfer motions in misdemeanor cases, and would be unlikely to go to the trouble except in unusual circumstances.

The following tables indicate how shifting misdemeanor cases would likely impact Family Court workloads, change offense profiles in Family Court, and affect demand for dispositional services in the juvenile system. Because misdemeanants form such a large proportion of the District Court’s workload involving 16- and 17-year-olds—829 out of 955 cases—the tables are broadly similar to those already presented. Still, in view of the focus group’s enthusiasm for this option, it’s worth exploring them in detail, and using them to make tentative projections about resource and other costs that might be associated with the change.

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<sup>12</sup> Arizona, California, Delaware, Florida, Georgia, Louisiana, Oklahoma, and Virginia.

## Impact of Option Three on Court and Legal System Workloads and Case Profiles

Table 13 shows both the volume and offense profiles of disposed cases involving older youth in the Family and District Courts during fiscal 2006. Table 14 shows the hypothetical effect of shifting District Court misdemeanor cases to the Family Court's docket. The Family Court's delinquency workload rises by 63%--a substantial increase, but less than the 72% increase that would result if all cases were shifted. (Here again, it should be borne in mind that delinquency cases represent only a small proportion of the Family Court's business, so the increase to the Family Court's *overall* workload would be considerably smaller—less than 5%)

The offense profile of the Family Court's adjusted caseload following its absorption of 16- and 17-year-old misdemeanants would be different, but not radically different, from that of its current caseload. Generally, the proportion of drug, obstruction of justice and larceny-theft cases would rise the most.

Most serious offense	Delinquency Cases Disposed in Family Court, FY 2006			Misdemeanor Cases Disposed in District Court, FY 2006		
	Age 16	Age 17	All Ages	Age 16	Age 17	Both Ages
<b>Total</b>	241	55	1,323	261	568	829
<b>Person</b>	49	14	311	47	77	124
Violent	8	2	37	0	0	0
Simple assault	38	11	260	43	73	116
<b>Property</b>	85	19	482	94	152	246
Burglary	23	2	74	0	0	0
Larceny-theft	19	4	154	54	80	134
Vandalism	16	3	116	22	30	52
<b>Drugs</b>	19	6	69	38	99	137
<b>Public order</b>	61	12	274	49	104	153
Disorderly conduct	21	3	145	20	39	59
Obstruction of justice	22	2	46	23	54	77
<b>Other</b>	27	4	187	33	137	170
Liquor offenses	25	2	174	9	72	81

Counts presented in this table are cases, not charges

**Table 14**  
**Impact of Moving all 16- and 17-year-old Misdemeanants**  
**from District Court to Family Court**

Most serious offense	Adjusted Family Court Delinquency Case Workload			Percent Increase*
	Age 16	Age 17	All cases	
Total	502	623	2,152	63%
<b>Person</b>	96	91	435	40
Violent	8	2	37	0
Simple assault	81	84	376	45
<b>Property</b>	179	171	728	51
Burglary	23	2	74	0
Larceny-theft	73	84	288	87
Vandalism	38	33	168	45
<b>Drugs</b>	57	105	206	199
<b>Public order</b>	110	116	427	56
Disorderly conduct	41	42	204	41
Obstruction of justice	45	56	123	167
<b>Other</b>	60	141	357	91
Liquor offenses	34	74	255	47

Counts presented in this table are cases, not charges.

\* The increase between the known delinquency workload and the adjusted delinquency workload.

The increases in delinquency cases that would be expected from shifting misdemeanants from District to Family Court would not be uniformly distributed across counties. Family Court delinquency cases would increase as little as 33% or as much as 94%, depending on the county (see Table 15). In Chittenden County, which handled about a quarter of Vermont's delinquency cases in fiscal 2006, the delinquency caseload would rise about 60%.<sup>13</sup>

<sup>13</sup> But note that probation and other responsibilities in juvenile cases are assigned according to DCF district office service areas, which do not correspond precisely to county boundaries. Because District Court data do not reflect an offender's DCF district service area, in the following section we use a different method for estimating how many of these hypothetical new cases would be assigned to each district caseload.

**Table 15**  
**County Impact of Moving 16- and 17-year-old Misdemeanants from District to Family Court**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
State	296	1,323	830	1,126	2,153	63%
Addison	15	53	41	56	94	77
Bennington	34	113	83	117	196	73
Caledonia	6	67	63	69	130	94
Chittenden	79	305	184	263	489	60
Essex	1	6	2	3	8	33
Franklin	32	115	63	95	178	55
Grand Isle	1	6	5	6	11	83
Lamoille	6	40	13	19	53	33
Orange	17	43	30	47	73	70
Orleans	15	77	35	50	112	45
Rutland	32	158	71	103	229	45
Washington	15	121	90	105	211	74
Windham	26	134	77	103	211	57
Windsor	17	85	73	90	158	86

\* The increase between the known delinquency workload and the expected delinquency workload.

This shift will impact the Juvenile Defender system, as well. This impact has not been analyzed in detail. However, in the juvenile system, the expectation will be that counsel represents youth; often this will be at public expense.

**Impact on Juvenile Justice System of Care Programming, Services and Staffing**

How would shifting responsibility for 16- and 17-year-old misdemeanants from the adult to the juvenile justice system—the change option considered most realistic by the focus group—impact programming, services, and required staffing levels?

Obviously, we can make some broad conjectures about this on the basis of estimates of the volume of cases that would likely have shifted, the ages and offenses of the youth involved, and the way similar youth have been handled in the juvenile and adult systems in the past. But the most useful information for purposes of estimating program and

service impact—the actual risks/needs of the population of 16- and 17-year-olds involved—was not available.<sup>14</sup>

Moreover, predictions in this area—even far more precise predictions than are possible to us given the available data—are of limited usefulness, because much of what happens will be driven by conscious policy decisions rather than mere numbers of youth shifted. In reality, all of the 16- and 17-year-olds being discussed here are already the responsibility of Vermont’s Agency for Human Services. There is no “influx” of offenders being anticipated from anywhere—no new wave of crime or immigration. A question has simply arisen as to how best to respond to an existing population—in one department of the agency or another.

And although each of these departments has its own approaches and policies, these are not set in stone either. As will be discussed further on, if large numbers of youth are to be shifted from DOC to DCF responsibility, the occasion can and probably should be seized as an opportunity to rethink DCF’s overall approach to delinquent youth.

### **Projected Dispositions in Misdemeanor Cases**

If we judge from the Family Court’s past practice in disposing of cases that were similar in age/offense terms, we would expect about 13% of these shifted misdemeanor cases (112 out of 829) to be diverted, and 39% (328 out of 829) to receive probation-only dispositions. The overall number of diversion cases in the adjusted Family Court

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<sup>14</sup> As has been noted elsewhere in this report, while DOC does screen offenders in some way for risk, for purposes of assigning probation levels, it does not generally conduct risk or needs assessments on 16- and 17-year-olds.

delinquency caseload would increase by 30%, and the number of probation cases would increase by 67%.

Using the same assumption, shifting misdemeanants to Family Court would nearly double the number of cases ordered into DCF custody. That is because a large proportion of the misdemeanor cases are the *types* of cases—at least in age/offense terms—that tend to be ordered into DCF custody. However, in this context the basic assumption—that a custody disposition is closely related to the age and offense of the youth, as opposed to family and other circumstances that are unlikely to be age/offense-related—is questionable.

**Table 16**  
**Estimated New Service Workloads Based on Family Court Dispositional Tendencies for Misdemeanor Cases**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Total Cases Disposed	296	1,323	829	1,125	2,152	63%
Diversion	53	374	112	165	486	30*
Probation Only	119	486	328	447	814	67
DCF Custody	128	479	466	594	945	97

\* Note that, since DCF never sees diversion cases, the diversion increase does not represent increased DCF workload.

If we judge from the actual dispositions these misdemeanor cases received in District Court—assuming that they would receive analogous dispositions (at least where such dispositions are available) in Family Court—we would expect a much different pattern. In District Court, 101 of these misdemeanor cases (12% of the total) were dismissed outright. Another 314 (almost 38% of the total) were diverted. Of the remainder, 221 (26%) received some form of probation. If these patterns were followed

in Family Court, then, overall diversions at the Family Court level would increase by 84% and probation cases would increase by 33% (see Table 17).

**Table 17**  
**Estimated New Service Workloads Based on District Court Dispositions for Misdemeanor Cases**

Disposition	Delinquency Cases Disposed in Family Court, FY 2006		Cases from District Court, FY 2006	New Family Court Service Workloads		Percent Increase*
	Ages 16 & 17	All Ages	Ages 16 & 17	Ages 16 & 17	All Ages	
Diversion	53	374	314	367	688	84%
Probation	164	674	221	385	895	33

Counts are cases, not charges.

\* The increase between the known delinquency workload and the expected delinquency workload.

Table 17 shows only those District Court dispositions that are strictly analogous to dispositions in Family Court. What happened to the rest of the District Court’s misdemeanor cases involving 16- and 17-year-olds? A good chunk—125 cases, or 13% of the total—received no other disposition except fines and costs. While there is currently no equivalent disposition at the Family Court level, a fine-only disposition can be considered a relatively light sanction, with few public safety implications, and so has something in common with lighter sanctions—including both diversion and low-intensity probation—at the Family Court level.

In addition, it appears that 76 misdemeanants who were 16 or 17 (about 9% of the total) received sentences that involved some period of “jail ordered.” From the court data, it is not possible to distinguish cases in which the youth actually served a period of incarceration from those in which the youth was assigned to “pre-approved furlough” status (meaning that the youth never actually was admitted to any facility). But if we

were to use the cases in which some kind of incarceration was ordered in District Court to predict the number of cases in which custody would be ordered in Family Court, we would expect to see an addition of 76 custody cases, increasing the overall number of DCF custody dispositions in Family Court by 26%. But here again, the basic assumption behind the prediction is somewhat questionable.

### **Formal Processing and Diversion Impact**

As was explained in the previous section, NCJJ employed two basic approaches to estimating what would happen to the misdemeanor cases that would shift from the District to the Family Court. According to one method—which was based on what had happened to similar cases in Family Court during fiscal 2006—a total of 112 of the 829 misdemeanor cases shifted would be diverted from formal processing, increasing the overall number of Family Court delinquency cases diverted by 30%. According to the second method—which looked at what actually happened to the misdemeanor cases in District Court to predict what would have happened to them in Family Court—a much higher number of cases would be diverted: 314. That would increase the overall number of Family Court delinquency cases diverted by 84%.

Would this mean that, in the event of a shifting of 16- and 17-year-old misdemeanants from District to Family Court, the county-based diversion programs that serve these youth should prepare for an increase in referrals of as much as 84%? Not at all. Vermont Court Diversion Programs already accept clients referred from both courts. From their point of view, changing the source of the referrals would not in itself change the overall volume at all.

This does not mean that overall diversion volume couldn't change in the event of a shift, however. For example, there could be an increase of juvenile cases referred to

diversion due to the limited number of dispositional options available in Family Court—and particularly the absence of a fine-only option. Cases that would have been formally handled as fine-only matters in District Court might instead be referred to diversion.

On the other hand, overall diversion volume could decrease. In fiscal 2006 these programs handled more than a third of the District Court's cases involving 16- and 17-year-olds, but less than a fifth of the Family Court's cases in the same age group. Of course, State's Attorneys offices were doing the referring in both instances—but not necessarily the same individuals within those offices, and not necessarily according to the same criteria. It may be that prosecutors are more comfortable with diversion when charges are filed in District Court, because they have more confidence in the criminal conviction and sanctioning that will follow in the event diversions are unsuccessful. In any case, if misdemeanor cases were shifted and this distinctly different diversion referral pattern remained, it would mean 218 fewer diverted cases overall.

It should be remembered that the alternative to diversion is formal processing. If the Family Court can expect to receive 829 additional delinquency cases following the shift of 16- and 17-year-old misdemeanants from District Court, how many additional non-diverted/formally processed cases should it expect? Judging from the diversion referral pattern actually applied to these cases in District Court, the answer would be 515. Judging from the diversion referral pattern being applied to older youth in Family Court, the answer would be 680. The first figure would represent a 54% increase in formally processed delinquency cases. The second would represent a 72% increase. (Again, these are percentage increases in the Family Court's formally processed *delinquency* caseload—not its much larger overall caseload.)

The focus group, in discussing the diversion issue, generally discounted the possibility that cases currently being diverted at the District Court level would not likewise be diverted if they were shifted to the Family Court. These would be, after all, the same youth, with the same eligibility, presenting the same histories and characteristics to the same diversion referral decision-makers. Accordingly, it seemed to the focus group that the more likely scenario would be that, following the shift of misdemeanants from District to Family Court, diversion programs would receive more referrals from Family Court and fewer from District Court, but the same volume of referrals overall. In that case, the Family Court formal processing workload would increase by 515 rather than 680 cases.

### **Probation Caseload Impact**

Projecting the impact on DCF probation workloads of a shift of 16- and 17-year-old misdemeanants from District to Family Court is considerably more complicated. Here again we have the Family Court's past dispositional patterns in cases involving similar youth, as well as the District Court's actual handling of misdemeanants in this age group. Each gives us an estimated increase in the number of Family Court cases that would receive probation-only dispositions under this option. But using these estimates to calculate how many additional workers would be needed in DCF is difficult, because of the varying ways DCF caseworkers divide their efforts between delinquency and non-delinquency responsibilities.

As of the end of 2006, 129 DCF caseworkers were responsible for 2,143 cases of various types, including child abuse investigations, child protective services, court-ordered protective supervision, juvenile probation, and children in custody for abuse or neglect, delinquency and other child behavior issues. In this total statewide DCF

caseload, there were 319 youth who were on probation, but not in DCF custody. (Over the last three years, the average probation-only caseload at the end of each quarter was 320 youth.) These cases were generally supervised by caseworkers with mixed (delinquency and non-delinquency) caseloads. Currently, only three DCF caseworkers in the whole state carry probation-only cases exclusively; both are in the districts with the highest volume of probation cases. (Burlington has two caseworkers assigned to probation work; Rutland has one. These workers carry much higher average caseloads than do other social workers.) The rest of the social workers around the state split their time among widely varying types of cases and widely varying types of youth. The average overall caseload—taking into account cases of all types, including both short- and long-term work—was about 16 cases as of the end of 2006. Delinquency probation-only cases accounted for about 2.5 cases out of that average caseload.

Using these figures as a starting point, we can begin to see how moving 16- and 17-year-old misdemeanants out of the adult system and into the juvenile one would expand DCF probation caseloads. If all the members of this group who were ordered onto DOC probation in District Court in fiscal 2006 were shifted to Family Court and also received probation-only dispositions there, it would have resulted in 221 new DCF probation-only cases. On the other hand, if we rely on the pattern established by Family Courts over a range of cases involving older youth in fiscal 2006, and assume that they would tend to order probation-only dispositions in the same kinds of cases if their docket were expanded to include all misdemeanants, the result would be 328 new DCF probation-only cases.

Neither of these figures tells us directly how many new probation cases DCF caseworkers would be responsible for at any one time. The relationship between annual probation dispositions and the total point-in-time probation workload will vary from place to place, depending primarily on the lengths of time probationers remain under supervision. But it appears that in Vermont, the statewide juvenile probation caseload is roughly equal to annual juvenile probation dispositions statewide. If we accept the assumption that an increase of one probation disposition to the annual total also increases the statewide probation workload by one case, then the addition of 221 new probation dispositions would increase the statewide DCF probation caseload from 319 to 540. The addition of 328 new probation cases would increase the statewide DCF probation caseload from 319 to 647.

Assuming that each DCF district would carry about the same proportion of the statewide total of probation-only youth as it did at the end of 2006, we can make district-level estimates of the number of workers that would be needed to supervise the expanded DCF probation caseloads. Tables 18 and 19 below allocate the projected new probation-only cases among district offices under the two expansion scenarios, and indicate how many caseworkers would be called for if each DCF worker carried a probation-only caseload of 35.<sup>15</sup> They indicate that the total number of full-time equivalent (FTE) caseworkers needed statewide would range from 15 to 18.

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<sup>15</sup> Juvenile probation caseloads typically range from 25 to 45 cases, depending on the size of the jurisdiction and the degree to which probation officers are devoted to specialized functions or populations. Since 1967, an overall caseload standard of 35 delinquency cases per juvenile probation officer—set by the President’s Commission on Law Enforcement and Administration of Justice and endorsed by the National Probation Association, the American Correctional Association, the National Council on Crime and Delinquency, the U.S. Children’s Bureau, and the National Council of Juvenile and Family Court Judges—has prevailed. See Hurst, H. (1999). *Workload Measurement for Juvenile Justice System Personnel: Practices and Needs*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of

**Table 18**  
**Estimated Impact on DCF District Offices if 221 Probation Cases**  
**Were Added Statewide**

District	Probation-Only Cases Open on 12/31/06	Percent of State Caseload	New Probation- Only Cases	New Probation-Only Caseload	FTE Caseworkers needed (Caseload =35)
Barre	14	4.4%	10	24	0.7
Bennington	42	13.2	29	71	2.0
Brattleboro	15	4.7	10	25	0.7
Burlington	112	35.1	78	190	5.4
Hartford	12	3.8	8	20	0.6
Middlebury	20	6.3	14	34	1.0
Morrisville	8	2.5	5	13	0.4
Newport	16	5.0	11	27	0.8
Rutland	22	6.9	15	37	1.1
Springfield	21	6.6	15	36	1.0
St. Albans	16	5.0	11	27	0.8
St. Johnsbury	21	6.6	15	36	1.0
Statewide	319	100.0%	221	540	15.5

**Table 19**  
**Estimated Impact on DCF District Offices if 328 Probation Cases**  
**Were Added Statewide**

District	Probation-Only Cases Open on 12/31/06	Percent of State Caseload	New Probation- Only Cases	New Probation-Only Caseload	FTE Caseworkers needed (Caseload =35)
Barre	14	4.4%	14	28	0.8
Bennington	42	13.2	43	85	2.4
Brattleboro	15	4.7	15	30	0.8
Burlington	112	35.1	115	227	6.5
Hartford	12	3.8	12	24	0.7
Middlebury	20	6.3	21	41	1.2
Morrisville	8	2.5	8	16	0.5
Newport	16	5.0	16	32	0.9
Rutland	22	6.9	23	45	1.3
Springfield	21	6.6	22	43	1.2
St. Albans	16	5.0	16	32	0.9
St. Johnsbury	21	6.6	22	43	1.2
Statewide	319	100.0%	328	646	18.4

Juvenile Justice and Delinquency Prevention. However, it should be noted that in Vermont, Youth Corrections Services Specialists—specially created positions assigned to supervise youth ages 16-22—carry caseloads of only 20.

How many *new* FTE caseworkers would have to be hired to meet this statewide need, and what would it cost? In a state in which all juvenile probation cases were supervised by interchangeable workers who handled probation cases exclusively and adhered to the recognized caseload standard of 35 cases per worker, the addition of 221 new cases would necessitate the hiring of 6.3 additional FTE workers. Since, according to DCF, the annual cost of employing one FTE caseworker is about \$63,590, this would mean an additional annual expense of \$400,617. The addition of 328 new cases would call for the hiring of 9.4 additional FTE workers, at an annual cost of \$597, 746.

In Vermont, however, the situation is far more complicated. Probation cases are scattered across a dozen DCF districts statewide, and most DCF offices do not currently handle enough probation-only cases to employ a dedicated probation worker. With the expanded probation caseloads resulting from a shift of 16- and 17-year-old misdemeanants into the juvenile system, however, that would change. Vermont would be in a position to employ specialized probation workers in most DCF district offices (nearly all if we take the higher of the two estimates of caseload expansion). In order to make this change, and assign at least one dedicated probation worker to handle the expanded caseload in each DCF office, DCF would need to add at least 12 and as many as 15 new FTE probation-only caseworkers statewide—at an annual cost of between \$763,080 and \$953,850.

It should be noted that, since this change will involve shifting probation cases from mixed caseloads carried by current DCF caseworkers—freeing them to take on other kinds of cases—DCF may be able to realize savings, at least in some districts, by

reallocating cases among existing workers.<sup>16</sup> In addition, members of the focus group pointed to another way in which the impact of a shift of probation cases into DCF could be mitigated: if Family Court judges were to adopt the practice of ordering “term probation” for definite and limited periods, as in the adult system. Focus group participants reported that juveniles tend to remain on probation for long periods in Vermont, and this observation is confirmed by DCF data: of 55 probation-only cases closed during the second quarter of 2007, more than 40% had been open for more than a year. But if 16- and 17-year-old misdemeanants ordered onto probation in Family Court were given definite probation terms of less than a year, to be extended only at DCF’s request, it would significantly diminish the effect on DCF caseloads. For example, if all additional probation cases were given six-month terms, DCF’s point-in-time caseloads would rise by only one-half the annual number of additional cases. Even if an additional 328 cases were ordered on probation in Family Court each year, DCF would only have to manage an additional 164 probation cases at any one time.

### **Custody Caseload Impact**

As of June 30, 2007, out of a total of 1,382 children in DCF custody, there were 347 delinquent youth in custody being supervised by DCF caseworkers. How would the shift of 16- and 17-year-old misdemeanants impact these custody caseloads?

Because there is no “custody” disposition in District Court, we cannot form any estimate on the basis of what Vermont District Court judges have actually done with 16-

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<sup>16</sup> In theory, of course, shifting these cases out of the adult correctional system should yield savings to DOC as well. According to DOC representatives, however, 16- and 17-year-olds represent such a small proportion of DOC probation officers’ caseloads—and misdemeanants in particular are given so little attention—that shifting these youth would not enable DOC to make significant changes in staffing, and would result in almost no compensatory savings on the adult system side.

and 17-year-old misdemeanants. The only estimate we have to go on is the one based on Family Court dispositional tendencies in cases involving 16- and 17-year-olds—which suggest that custody dispositions in the event of a shift (including both those that involve custody only and those in which custody is coupled with probation) would increase by 97%.

At the current average caseload of 16 cases per DCF worker, it requires about 22 FTE caseworkers to supervise the state’s total custody caseload. In the event of a rough doubling of the number of delinquent custody cases, assuming this caseload remains constant, an additional 22 FTE caseworkers would be called for, at an annual cost of \$1,398,980.

When this figure is added to the projected annual cost of additional caseworkers needed to supervise the expanded probation-only caseload—\$763,080 and \$953,850—it appears that the total annual cost for additional DCF caseworkers would be between \$2,162, 060 and \$2,352, 830.

### **Other DCF Staffing Impacts**

If shifting 16- and 17-year-old misdemeanants to the juvenile system creates a need for somewhere between 34 and 37 new DCF caseworkers (12 to 15 new probation-only caseworkers, plus 22 new caseworkers to supervise delinquents in custody), about seven new DCF supervisors will be needed to oversee them, assuming a one-to-five ratio of supervisors to caseworkers. Given the current ratio of DCF administrative staff to open cases (about 1 to 67), the shift would require between three and four new administrative staff positions statewide as well. Finally, DCF estimates that the change would necessitate the hiring of at least one new system developer in its IT unit, as well as space and equipment for additional staff.

## **Impact on Detention and Placement Resources**

The court data alone give us little to go on when it comes to predicting the impact of shifting 16- and 17-year-old misdemeanants on detention and placement resources. When information from DCF and other sources is added, we get a somewhat fuller picture.

First, it is likely that the shift would impose a further strain on the state's already strained secure juvenile detention resources. It is true that in one sense, the addition of older misdemeanants to the Family Court workload would not add to the pool of juveniles eligible for pre-trial detention at the Woodside Juvenile Rehabilitation Center. As was noted previously, by interdepartmental agreement between DOC and DCF, 16- and 17-year-old accused misdemeanants may already be held in Woodside's detention wing. In fact, there were 164 detention admissions involving 16- and 17-year-olds in 2006, representing 45% of all admissions that year, and some of these youth were undoubtedly misdemeanants awaiting processing in the adult system. Until now, however, the option has been available only when the detention wing had at least three open beds and was not holding any juveniles under 13, and only when the accused misdemeanant was not expected to have to stay more than a month. In the event of a jurisdictional shift, these restrictions might have to be reconsidered. Insofar as 16- and 17-year-old youth have been kept out of Woodside as a result of these restrictions, they might have to be admitted—which would arguably have a negative impact on the younger adolescents detained there.

Woodside's detention wing is used for more than pre-trial and pre-disposition holding, however. Its uses as a placement for short-term sanctions and a response to probation violations would likely be severely strained by the addition of hundreds of new

candidates for these uses. The unit already has a very high utilization rate—91% in 2006, and that was actually *down* from previous years. But these are uses that are well within DCF control. It should be borne in mind that the primary determinant of detention utilization is policy.

The effect of the shift of 16- and 17-year-old misdemeanants on placement/substitute care resources is likely to be substantial as well. In the previous section on the probable impact on custody caseloads of a shift of 16- and 17-year-old misdemeanants from the adult to the juvenile system, we assumed (on the basis of court data showing Family Court dispositional patterns in cases involving older youth) that custody dispositions would double. Since DCF custody does not invariably involve out-of-home placement, this does not in itself mean that demand for substitute care would also double. However, DCF data on the living arrangements of delinquent youth in custody as of June 30, 2007 indicate that about 83% of the 16- and 17-year-old delinquents were in some form of paid placement, as shown in Table 20.

Living Arrangement	Number	Percentage
Foster Home	65	33%
Residential	67	34
Independent Living	5	3
Woodside	12	6
With Parent	34	17
With Relative	11	6
On Runaway	2	1
Total	196	100%

Assuming that, following a shift of 16- and 17-year-old misdemeanants to Family Court, the projected new DCF custody cases were to be placed in the various possible custody settings in the same proportions as 16- and 17-year-old delinquents currently in DCF custody, the results and rough costs<sup>17</sup> would be as shown in Table 21.

Living Arrangement	New Custody Cases	Average Cost for One Year of Care	Total Cost for One Year of Care
Foster Home	115	\$ 30,000	\$ 3,450,000
Residential Care	119	75,000	8,925,000
Independent Living	9	6,700	60,300
Woodside	21		
With Parent	60		
With Relative	19	7,881	149,739
On Runaway	4		
<b>Total</b>	<b>347</b>		<b>\$ 12,585,039</b>

The \$12 million annual substitute-care cost projected under the assumptions laid out above stands in stark contrast to the amount Vermont currently spends on “placement” for 16- and 17-year-old misdemeanants in the adult system—almost nothing, since these youth are rarely incarcerated. But it should be noted that this is another area in which the real consequences of the shift would be at least partly within the state’s own control. The issue of the appropriate system response to jurisdictional change—whether it calls for application of the same methods and approaches to the new

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<sup>17</sup> Costs are based on averages furnished by DCF. No cost is provided for Woodside placements, since overall utilization of the facility is unlikely to change.

population, or a reconsideration and clarification of the system’s goals and the way it works to achieve them—will be discussed in a subsequent section.

### **Other Impacts**

The above discussion of the possible impacts of shifting 16- and 17-year-old misdemeanants from the adult to the juvenile system in Vermont is far from exhaustive. Time and resource constraints made it impossible to explore all of the areas in which substantial impacts are likely to be felt in the event of such a change, but these would include at a minimum, in addition to those mentioned above:

- *Courts and Legal Professionals.* Shifting the cases of older juveniles from the District Court docket to that of the Family Court will mean that they are processed in a completely different way, which is likely to involve more time, more parties, more paperwork, and—particularly if more custody dispositions result—more hearings. The shift will also change the offense mix and the average age of the clientele in Family Court, which may necessitate new approaches. All this will undoubtedly impose strains on judges, court staff, prosecutors, juvenile defenders, and others involved in handling juvenile cases, and may involve additional costs.
- *Facilities.* Vermont’s current array of facilities for holding accused delinquents and placing/treating adjudicated ones—secure and non-secure, public and private—is extremely limited, and unlikely to be adequate to meet the needs of the new population of older juveniles. Unless DCF is prepared to depart radically from its past practice with respect to holding and out-of-home placement, some expansion will be necessary.

- *Community-based services.* It appears that little attention is currently paid to the mental health, substance abuse, and other treatment needs of 16- and 17-year-old misdemeanants in the adult system, but it is likely that those needs are substantial. Introducing these youth into the needs-based juvenile system will almost certainly increase demand for services from treatment providers that are already said to be under significant stress.

## Blended Sentencing Change Options

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In addition to the basic changes to Vermont’s transfer laws discussed above, the focus group asked NCJJ to explore ways in which blended sentencing mechanisms could play a larger part in the handling of Vermont’s older juveniles.

Blended sentencing laws are different from transfer laws, in that, instead of changing the court in which a juvenile offender will be tried, they change the correctional system (juvenile or adult) in which the youth will be sanctioned. Sometimes they permit a juvenile who has been “moved up” for criminal court trial to be “moved down” again for sanctioning purposes. Or they may perform the reverse function, exposing youth who remained “down” for trial purposes to the risk of moving “up” for sanctions. A total of 17 states have laws of the former kind—*criminal blended sentencing* laws, under which criminal courts, in sentencing transferred juveniles, may impose what are essentially juvenile sanctions. Another 15 states have laws of the latter kind—*juvenile blended sentencing* schemes that empower juvenile courts to impose adult criminal sanctions on certain categories of serious juvenile offenders.

Vermont’s Youthful Offender law is an unusual hybrid of these two kinds of law. It technically belongs in the juvenile blended sentencing category, because in the end it is the Family Court that imposes the dual sentence—a juvenile disposition with a suspended criminal sentence. But in practical terms, the Youthful Offender law is more like a criminal blended sentencing law, because its overall purpose is to soften or mitigate the effects of Vermont’s transfer laws, at least in individual cases. It provides a mechanism whereby a cooperative youth who would otherwise be sanctioned as a criminal may be returned to the Family Court and the juvenile system for disposition purposes. The

juvenile disposition is only conditional—with a suspended adult sentence serving as a guarantee of good behavior—but in theory it is better than the straight adult correctional sentence the youth would otherwise have received.

In fact, however, the Youthful Offender law is rarely used. The obvious purpose of the law is to mitigate the effects of transfer, by offering an avenue to a less harsh sanctioning system. But juveniles themselves must initially set the Youthful Offender mechanism into motion, by pleading in District Court and seeking the more lenient treatment. And by and large they appear to perceive DOC sanctioning as lenient enough already. Given the very large proportion of criminally convicted older youth that receive fines only or low-intensity probation, it's hard to argue with their reasoning in the short term. Even assuming they have the assistance and advice of counsel—which may not always be the case, since attorneys not necessarily assigned in fine-only matters in District Court—juveniles may prefer the consequences of a criminal conviction over what they see as the more invasive DCF involvement in their lives (and at least potentially the lives of their families).

It's possible that inexperience with this complex law may be factors as well. Defenders may not always be aware of the Youthful Offender option. Or they may not be familiar enough with its features to be able to argue successfully—with judges, with prosecutors, or even with their own clients—for its use. But the deeper problem seems to be that the Youthful Offender law, given Vermont realities, is simply not the kind of blended sentencing law that is needed.

A more useful kind of blended sentencing law for Vermont would serve as an *alternative* to transfer for older and more serious youth, instead of a mechanism for

mitigating the effects of transfers that have already taken place. It would give State's Attorneys an incentive—in the form of an enhanced array of potential sanctions—to try older youth in Family Court. Over time, it would tend to strengthen prosecutors' confidence in the juvenile justice handling of older youth, and give the juvenile system the tools it needs.

That is how *juvenile* blended sentencing laws can work. Right now Vermont is indiscriminately moving large numbers of older youth into the criminal system, but sanctioning them there very lightly. A better approach would be to keep them in the juvenile court system, but to make more serious blended sanctions available there, and give State's Attorneys rather than juveniles the power to seek the blended option.

A number of states offer models that may be suitable. In Alaska, for example, a juvenile accused of a qualifying offense may be subject to “dual sentencing” in juvenile court. Candidates are initially referred by the Alaska Division of Juvenile Justice to the district attorney. A district attorney who elects to seek imposition of a dual sentence must present the case to a grand jury and get an indictment for a qualifying offense first, then file a delinquency petition in juvenile court. If, following trial, the court finds that the juvenile has committed the qualifying offense, or the juvenile agrees as part of a plea bargain to be subject to dual sentencing, the court must impose both a juvenile disposition and an adult sentence that includes some period of imprisonment. If the juvenile successfully complies with the terms of the delinquency disposition, the case is closed and the adult sentence set aside.<sup>18</sup>

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<sup>18</sup> Alaska Statutes §§47.12.065, 47.12.120(j), 47.12.160.

In Illinois, the prosecutor may request that any case involving a juvenile age 13 or older accused of a felony be designated an Extended Juvenile Jurisdiction (EJJ) prosecution. Following a plea or finding of guilt in an EJJ case, the juvenile court imposes a dual (juvenile/suspended criminal) sentence. A hearing is held if a juvenile is later alleged to have committed a new offense or violated the conditions of the juvenile sentence. The court *must* order the execution of the adult criminal sentence if it finds, by a preponderance of the evidence, that the juvenile committed a new offense. Otherwise, the court may choose between continuing the juvenile disposition (with or without modifications) and ordering execution of the adult criminal sentence.<sup>19</sup>

Kansas has an EJJ law that is an explicit alternative to waiver to criminal court, applicable in any waiver-eligible case. In fact, not only may the district attorney move for an EJJ designation in a juvenile case, but the court may respond to a motion to transfer to criminal court by instead granting an EJJ designation. The procedures, presumptions, and factors to be considered in determining whether to designate a case an EJJ prosecution are identical to those involved in a hearing to consider whether a juvenile should be prosecuted as an adult. Following a plea or finding of guilty in an EJJ case, the court must impose (1) a juvenile disposition and (2) an adult criminal sentence, “the execution of which shall be stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.” At age 18, the juvenile is entitled to a hearing reviewing the necessity of continuing the juvenile disposition, and a subsequent review if necessary no more than 3 years later. However, if the court at any time finds by substantial evidence that the juvenile has violated the

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<sup>19</sup> 705 ILCS §405/5-810.

conditions of the juvenile disposition, it must revoke the stay and impose the adult sentence.<sup>20</sup>

It will be seen from these examples that imposition of the adult sanction can be made more or less automatic in the event that the juvenile commits a new offense—with the court’s only role being to determine that the new offense was in fact committed. While this deprives judges of some flexibility, it tends to make the blended sentencing option more credible to prosecutors. One complaint NCJJ heard several times regarding Vermont’s Youthful Offender law was that it leaves too much discretion to the Family Court regarding how to respond to a Youthful Offender’s new offenses or failures to comply with the conditions of a juvenile disposition.

It should be borne in mind that a juvenile who is exposed to the risk of adult sanctions, even in juvenile court, is entitled to the same basic procedural rights as a criminal defendant, including the right to be tried by a jury. However, the juvenile is generally permitted to waive a jury trial right and be tried before a juvenile court judge.

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<sup>20</sup> Kansas Statutes §§38-1636, 38-16,126

## **Jurisdictional Retention Change Options**

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As was noted earlier, in most states, juvenile courts may retain jurisdiction for disposition purposes until a youth's 21<sup>st</sup> birthday, or even beyond; only a small minority of states cut off supervisory jurisdiction over delinquents when they reach age 18. Current Vermont law, in ruling out the possibility of most delinquents<sup>21</sup> being served, held or supervised beyond their 18<sup>th</sup> birthdays, drastically limits the capacity of the juvenile system to address serious offending, or for that matter any offending by older juveniles. The focus group expressed interest in exploring how Vermont's retention mechanism for juveniles could be changed.

Vermont's unusually low age ceiling on juvenile jurisdiction is clearly regarded as a problem by many, and would become a far more serious problem in the event any or all of the 16- and 17-year-olds currently handled in District Court were to be shifted to Family Court. About two-thirds of those responding to our survey of state trial judges specified that jurisdiction beyond age 18 would be needed in such a case.

In all, 44 states empower juvenile courts to retain jurisdiction over individual cases for at least two to four years beyond the upper age of original juvenile jurisdiction. The youth's 21<sup>st</sup> birthday is the most common limit (33 states), but a few states (Colorado, Hawaii, and New Jersey) impose no set limit at all—permitting juvenile courts to exercise jurisdiction for the full term of any dispositional order.

In practice, juvenile retention laws tend to conform to one or another of a few basic models. Some states simply authorize juvenile courts to keep ongoing control of

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<sup>21</sup> A limited exception is made for Youthful Offenders, who may in some circumstances remain under juvenile jurisdiction for an additional year, until their 19<sup>th</sup> birthdays.

cases as they see fit, up to an outer limit (usually the 21st birthday). For example, Maryland law provides that, “If the court obtains jurisdiction over a child under this subtitle, that jurisdiction continues until that person reaches 21 years of age unless terminated sooner.”<sup>22</sup>

Other states require the court to make some kind of special finding justifying special extensions of jurisdictions. So in Arkansas, the court may generally “retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile was adjudicated delinquent prior to eighteen (18) years of age.” However, if the court wishes to impose a commitment disposition extending beyond the 21<sup>st</sup> birthday, it must find that “the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.”<sup>23</sup>

Still other states have extended jurisdiction mechanisms that are similar to juvenile blended sentencing mechanisms—applying only to cases that meet a threshold level of seriousness, requiring special hearings, etc.—except that they don’t involve the imposition of adult criminal sanctions. For example, in Delaware the Attorney General must petition for extended jurisdiction prior to trial: “Extended jurisdiction shall mean that a juvenile subject to the jurisdiction of the Family Court, if found delinquent of the offense(s) giving rise to the petition, shall be subject to the jurisdiction of the Family Court until said juvenile reaches age 21 or is discharged from jurisdiction by the Court.” In ruling on the petition, the juvenile court must consider “the juvenile’s need for rehabilitation and the public’s right to safety,” and must take into account the seriousness of the underlying offense, the juvenile’s age at the time of trial, and “the time needed to

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<sup>22</sup> Code of Maryland § 3-8A-07.

<sup>23</sup> Arkansas Code of 1987, §§ 9-27-306, 9-27-331.

effectively rehabilitate the juvenile or to protect the public and whether either or both objectives may be met by the juvenile's 18th birthday.”<sup>24</sup>

Finally, some states do not provide for extended jurisdiction at the time of disposition, but *later* allow a party—such as the juvenile correctional agency—to petition the court to extend the disposition beyond the usual limit. In Georgia, a delinquency disposition order is generally effective for no more than two years. But if, prior to the expiration of the order, a motion to extend is filed by the state’s Department of Juvenile Justice in the case of a commitment order, or by any other party (including the court) in the case of any other order, the court that issued the original order may “extend its duration for an additional two years.” Before doing so, the court must hold a hearing and make a finding “that the extension is necessary for the treatment or rehabilitation of the child.”<sup>25</sup>

How do states with extended juvenile jurisdiction laws handle *committed* youth once they become young adults? In most cases, these youth simply remain in juvenile facilities. According to the Census of Juveniles in Residential Placement, there were 13,115 persons age 18 or over living in juvenile placement facilities nationwide as of the census date in 2006, and more than 20,000 who had reached the age of criminal responsibility for the state in which they were being held. Although they were adults in one sense, they were not considered “incarcerated adults” for purposes of the federal requirement of “sight and sound separation” between juveniles and adult offenders in secure facilities. Instead, they were “juvenile offenders” because they remained under juvenile justice supervision for delinquent acts committed as juveniles.

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<sup>24</sup> Delaware Code § 928

<sup>25</sup> Code of Georgia §15-11-70.

All states set some upper age limit on juvenile correctional custody, however. Twenty-nine states set the upper limit of juvenile correctional custody at a youth's 21<sup>st</sup> birthday.<sup>26</sup> In Arkansas, for example, a juvenile court “may commit the juvenile to the Division of Youth Services of the Department of Human Services for an indeterminate period not to exceed the twenty-first birthday of the juvenile.”<sup>27</sup> In Georgia, “[e]very child committed to the [Department of Juvenile Justice] as delinquent or unruly, if not already discharged, shall be discharged from custody of the department when he reaches his twenty-first birthday.”<sup>28</sup>

Some states allow or require the transfer of adjudicated delinquents to adult facilities at some point after they reach the age of criminal responsibility. Sometimes this may be automatic. In South Carolina, any “juvenile who has not been paroled or otherwise released from the custody of the [Department of Children, Youth and Families] by the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections.”<sup>29</sup> More often it is optional, as in New York, where “[t]he division for youth may transfer an offender not less than eighteen nor more than twenty-one years of age to the department of correctional services if the director of the division certifies to the commissioner of correctional services that there is no substantial likelihood that the youth will benefit from the programs offered by division facilities.”<sup>30</sup> The option may be available only for certain categories of serious juvenile offender, or only when special hearing requirements

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<sup>26</sup> Szymanski, L. “Minimum and Maximum Age of Juvenile Correctional Custody.” *NCJJ Snapshot* 9(5). Pittsburgh, PA: National Center for Juvenile Justice.

<sup>27</sup> Arkansas Code §9-28-206.

<sup>28</sup> Code of Georgia §49-4A-8.

<sup>29</sup> Code of Laws of South Carolina §20-7-7810.

<sup>30</sup> New York Consolidated Laws, Executive, Art. 19-G, §508.

have been met. In Colorado, when an “aggravated juvenile offender” in the custody of the Department of Human Services reaches the age of 20 years and 6 months, the Department must “file a motion with the court of commitment regarding further jurisdiction of the juvenile.” Following a hearing on the motion, the court of commitment “may either transfer the custody of and jurisdiction over the juvenile to the Department of Corrections, authorize early release..., or order that custody and jurisdiction over the juvenile shall remain with the Department of Human Services” to age 21.<sup>31</sup>

Any of these basic extended jurisdiction mechanisms could be adopted by the state of Vermont to give DCF more time to work with older juveniles, and thus to raise the “ceiling” of Vermont’s juvenile justice system. However, as is discussed more fully in the next section, merely extending the *duration* of DCF responsibility for delinquents, without any corresponding change in its focus, approach, or practical sanctioning capacity, would likely be ineffective.

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<sup>31</sup> Colorado Revised Statutes §19-2-601.

## **A Strategic Response To Jurisdictional Change**

Throughout the course of this study, in focus group meetings as well as other discussions with Vermont professionals, there has been a clear sense that the issue of what the state should do with 16- and 17-year-old offenders is related to much larger questions. What is Vermont’s juvenile justice system *for*? What is it trying to accomplish?

Many of those participating in these discussions expressed doubt regarding the clarity of Vermont’s juvenile justice mission and purposes. Even if the system’s formally stated statutory “purpose clause” provided clearer guidance here,<sup>32</sup> there is more to having a purpose than simply having a purpose clause. In fact, the focus group expressed strong agreement with the statement of one participant, that jurisdictional change should not be undertaken in isolation from these larger questions, and that “change options need to include a clarification of purposes” for juvenile justice services in Vermont.

The Chapter 55 Revision Committee currently reviewing Vermont’s framework of delinquency laws is reportedly considering recommending that the statutory purpose clause be rewritten to reflect a “Balanced and Restorative Justice” philosophy for Vermont. Many members of the focus group expressed approval of the general idea of placing more emphasis on holding youth accountable, including addressing victim issues, and less on meeting needs unrelated to their offending.

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<sup>32</sup> 33 V.S.A. §5501 is evidently derived from the Legislative Guide for Drafting Family and Juvenile Court Acts, a publication issued in the 1960s by the U.S. Children's Bureau. Apart from being somewhat dated, the clause is a “one-size-fits-all” statement of purpose that does not seem to point the system in any particular direction. It reflects neither Vermont’s own experience nor current best practice in juvenile justice nationwide.

But there is a strong pull in another direction—toward a child welfare-focused mission. Given the way delinquency services are currently organized and administered in Vermont, this seems to be unavoidable. DCF has a broad portfolio, encompassing the economic, social, and physical welfare of children and families generally. The juvenile justice responsibilities of DCF’s Family Services Division are thoroughly mingled with child welfare and child protection ones. Vermont is unique in this sense: although five other states<sup>33</sup> place delinquency services in a child welfare agency, *all of them* have a separate juvenile justice division that focuses exclusively on delinquency. *In no other state* are child welfare and delinquency functions united in this way. As one DCF administrator told us, it is common for the same caseworker to be given responsibility for “a snarling teenager and a shaken baby” at the same time.

Is it possible to maintain a clear focus on delinquency-related purposes and goals under these circumstances? In our visits to Vermont we often heard that the delinquency and child welfare populations are “really the same kids, with the same needs”—by way of justification for handling them with the same workers. But the same kids may need different kinds of professionals—with different training, responsibilities, and goals—to help them in different ways.

In our previous discussion of the juvenile probation impact of a large-scale shift of 16- and 17-year-olds into DCF, we speculated about how the change might be accommodated if DCF case-assignment patterns were changed so that all the additional cases—or even all delinquency cases, period—were given to delinquency specialists rather than caseworkers carrying mixed caseloads. One practical suggestion we heard

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<sup>33</sup> Delaware, New Mexico, Rhode Island, Tennessee, and Wyoming.

from a variety of sources during the course of this project involved DCF actually establishing delinquency casework specialty within the Division of Family Services. The addition of several hundred additional delinquency cases involving older juveniles with predominantly minor offenses would provide DFC with the *critical mass* of cases needed to make this specialization practical. However, it would require a dramatic re-conceptualization of the DCF caseworker function, as well as a variety of other practical changes: creation of a job description, employment requirements, tasks and responsibilities, outcomes, and performance measures for a new “Juvenile Probation Caseworker” position. In addition, DCF would have to re-think its plan for contracting for ancillary, contracted services that support the success of young delinquents.

This is an example of a strategic rather than operational response to jurisdictional change. Strategic planning is the process of determining where a system or an organization is going over the next few years and how it is going to get there. Strategic responses are broad, inclusive, long-term and include systematic critical reviews, and often major updates, of system mission, goals, objectives, expected outcomes, and measures of performance.

It is unlikely that Vermont’s juvenile justice system can continue to conduct business as usual in the event of the jurisdictional shift being contemplated, simply absorbing the additional workload or expanding existing operations to accommodate the influx of new cases. The introduction of hundreds of new cases involving older juveniles would represent a fundamental challenge. Vermont’s response would have to be fundamental as well:

- Identifying bedrock values and beliefs regarding the most appropriate responses to delinquent behavior in Vermont.
- Articulating a clear and unambiguous mission for juvenile justice in Vermont.
- Developing system-wide goals and measurable objectives in support of that mission.
- Reorganizing the system structure and operations to enhance its ability to meet juvenile justice goals and objectives.
- Revising operations, policies, procedures, and training to reflect the reorganized organizational structure.
- Evaluating the system of care—in particular mental health and substance abuse services—that will be necessary to support the success of delinquents on probation and in DCF custody.
- Assessing the impact of the increase in the custody population on transition-age youth supports, as the additional young people will be eligible for these supports.
- Measuring performance to document that objectives are being achieved and goals are being met.<sup>34</sup>

It will take time and effort to carry out these activities, and to manage the transition from Vermont’s current juvenile justice system—which effectively ignores older youth—to one that is capable of responding effectively to all juvenile-age offenders. Vermont would do well to benefit from the experience of Connecticut, which

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<sup>34</sup> Further information on performance measurement is included in Appendix B (Measuring Juvenile Justice System Performance in Vermont) and Appendix C (National Report Card Project: Case Closing Report Form).

recently expanded its juvenile justice jurisdiction to include 16- and 17-year-olds and began the process of transitioning to an expanded system. Although Connecticut made the statutory change early in 2007, it put off the effective date until 2010. In the interim, the state established a Juvenile Jurisdiction Policy and Operations Coordinating Council to monitor implementation of a transition plan created by a separate Juvenile Jurisdiction Planning and Implementation Committee. By law, the Coordinating Council is required to study and make recommendations regarding a variety of issues crucial to the transition, including:

- Development of new diversion programs;
- Comprehensive projections of short- and long-term placement capacity required, including additional pretrial detention facilities and feasible alternatives to detention;
- Determination of which state agencies shall be responsible for providing mental health and substance abuse services, housing, education and employment services to juveniles;
- Development of procedures for the lawful interrogation of juveniles; and
- Intervention strategies to reduce the number of suspensions, expulsions, truancies and arrests of juveniles.<sup>35</sup>

At the operations level, the Connecticut Judicial Branch's Court Support Services Division has developed a four-point plan for handling the influx of 16- and 17-year-olds,

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<sup>35</sup> Sec. 88, Connecticut Public Act No. 07-4, Laws of 2007. An excerpt from P.A. No. 07-4, describing the make-up and duties of the Juvenile Jurisdiction Policy and Operations Coordinating Council, is reproduced in the Appendix D.

which it has presented to the Juvenile Jurisdiction Planning and Implementation Committee. The plan includes:

- **Modification of the probation work force.** Both reassignment of a core group of veteran probation officers and new training in case management techniques are contemplated.
- **Adaptation of the existing juvenile service delivery system.** Existing contracted programs providing screening, treatment, skill development, diversion and other services will be expanded.
- **Creation of new youth programs.** Programs providing educational and vocational support, transitional housing and other services will have to be created.
- **Establishment of an infrastructure to ensure positive outcomes.** Desired outcomes have been projected (including lower re-arrest rates, fewer incarcerations, and increased engagement in pro-social activities), and staff will be assigned to quality assurance and outcome measurement.

Under the Court Support Services Division's plan, all needed changes will be in place by July of 2009—six months before the effective date of the law expanding juvenile jurisdiction. For more information on the plan, see Appendix E.

There is consensus in Vermont on the need to reconsider the state's current approach to 16- and 17-year-olds in conflict with the law. There are also compelling reasons to do so. The state is clearly far outside the mainstream, both in the broad discretion it grants to prosecutors in choosing the appropriate forum in which to try these youth, and in the narrow scope it allows to judges to review these decisions. As a result, a substantial majority of 16- and 17-year-old offenders are handled in the same manner as adult criminals, and receive sanctions that do not take into account their developmental status or their developmental needs. Especially in view of recent advances in our understanding of the profound differences between adolescents and adults—in comprehension, impulse control, and foresight as well as capacity for change—it seems likely that the state would get better outcomes, both in the short and long terms, by treating these young people as the adolescents they are.

The disruptions caused by such a change in approaches would likely be substantial, however. Vermont should not consider shifting older youth from the adult to the juvenile system without adequate preparation and input from all system actors likely to be impacted. Nor should it make one primary statutory change without also attending to the series of secondary adjustments in law, policy, and programming that would also be needed. Without some provision for extending delinquency jurisdiction beyond a youth's 18<sup>th</sup> birthday, for example, the juvenile system may not have the “teeth” it needs to handle more serious, older offenders. Likewise, some provision for routine, time-limited probation dispositions in Family Court (like the “term probation” imposed in the

adult system) may be necessary to enable the juvenile system to process a large flow of low-level offenders efficiently.

In commissioning this study, Vermont has taken a good first step on the road to orderly and effective jurisdictional change. Though the study has not settled every vital question, it has given Vermont policymakers basic information regarding the kinds of impacts that can be expected from jurisdictional change. The most dramatic impact, of course, would be felt by DCF, which would have to add a significant number of new staff, and would require increased funding for substitute care and other contractual services as well as the means to develop new resources—including foster and residential care resources—that do not exist at this time. The community system of care for children and their families would also be significantly impacted, as many more older adolescents would be comprehensively assessed, and likely found to be in need of social services. Though Vermont’s courts might end up handling the same total number of cases in the event of the shift being considered, the way they handle them—the procedures they use, the goals they try to achieve, the time they take, the people and resources they draw on—would change considerably, in ways that have yet to be quantified. The same would be true of the roles of prosecutors and defenders. The state’s DOC might not be significantly affected by a shift of 16- and 17-year-olds out of its jurisdiction—if only because it devotes few resources to them now. Likewise, it’s possible that Vermont’s Diversion Boards would hardly notice the change, since it might affect only the sources, and not the volume or characteristics, of their referrals. But for the most part, every agency and individual involved in responding to youth in conflict with the law would be

impacted in some way, and all should be given opportunities to weigh in, to contribute information and perspective, and to help the state plan and prepare for orderly change.

Clearly, that calls for time. If Vermont should elect to enact changes of the magnitude being considered, it would do well to follow the recent example of Connecticut by delaying full implementation for a period of years—and use the time to undertake a thoughtful planning process involving all branches of government, to appropriately reallocate resources, to complete new hiring and training initiatives, and to establish or contract for programming to meet projected service needs.

## Appendices

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- Appendix A Vermont Judicial Survey (2 pages)
- Appendix B Measuring Juvenile Justice System Performance in Vermont (8 pages)
- Appendix C National Report Card Project: Case Closing Report Form (4 pages)
- Appendix D Connecticut Senate Bill No. 1500, June Special Session, Public Act No. 07-4, Section 88 (3 pages)
- Appendix E Connecticut Juvenile Jurisdiction Planning and Implementation Committee, Plan Summary (9 pages)

## Vermont Judicial Survey Juvenile Jurisdictional Options Study

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1. How satisfied are you with the process by which cases involving 16- and 17-year-olds in conflict with the law are currently selected for District or Family Court handling?

Not satisfied   
  Somewhat satisfied   
  Very satisfied

2. Indicate the degree to which you agree with the following statements regarding court handling of persons under the age of 18.

- Accused persons under 18 should never be handled as adults.

Strongly Disagree   
  Disagree   
  Neither Agree or Disagree   
  Agree   
  Strongly Agree

- Accused persons under 18 should be handled as adults only after an individualized determination made by a judge on the basis of a hearing.

Strongly Disagree   
  Disagree   
  Neither Agree or Disagree   
  Agree   
  Strongly Agree

- While accused persons under 18 should generally be handled as adults only after an individualized judicial determination, the most serious violent offenses should be excluded from juvenile court jurisdiction altogether.

Strongly Disagree   
  Disagree   
  Neither Agree or Disagree   
  Agree   
  Strongly Agree

- While accused persons under 18 should generally be handled as adults only after an individualized judicial determination, the most serious violent offenses should be excluded from juvenile court jurisdiction AND prosecutors should have the option of choosing adult handling for older juveniles accused of felonies.

Strongly Disagree   
  Disagree   
  Neither Agree or Disagree   
  Agree   
  Strongly Agree

3. Which of the following factors is most important in the decision whether to try an individual youth as an adult or a juvenile? (Rank them in order of importance, with 1 being the most important.)

Rank    Determining Factor

Offense level/type

Offense characteristics (harm to victim, premeditation, etc.)

Youth's prior record

Age of youth

Other (specify)

4. Which of the following offense types do you think a prosecutor is currently most likely to file in District rather than Family Court, if the accused is 16 or 17 years old? (Rank them in order of likelihood, with 1 being most likely.)

Rank    Offense Type

Person offenses

Property offenses



## Appendix

### Measuring Juvenile Justice System Performance in Vermont

The purpose of this project is to identify different juvenile justice jurisdiction options for Vermont's juvenile justice system and to project how the different jurisdiction options may impact the juvenile justice system in Vermont. In particular, the project has focused on the impact of options that would result in the retention in Family Court of large numbers (an estimated range of 829 to 955) of 16- and 17-year-old offenders who for many years have been routinely processed in District Court and sentenced to Vermont's Department of Corrections.

At the most fundamental level, the retention of large numbers of juveniles in Family Court will increase the workload of the juvenile justice system and change the characteristics of the cases handled by juvenile justice system agencies and service providers. The increased workload and different kinds of cases will also affect the performance of traditional juvenile justice system agencies, professionals and service providers. Because of this, we were also asked to consider the impact of the different juvenile justice jurisdiction options on juvenile justice system performance as well as workload.

However, Vermont, like most states, does not have a long history of measuring juvenile justice system performance. This is not to say that Vermont does not collect data that documents individual case characteristics, costs, and system inputs and outputs. In fact, our experience in Vermont has demonstrated that copious amounts of juvenile justice system data are collected, entered, processed, and reported each year. Unfortunately, juvenile justice agencies in Vermont—like those in most states—collect data that provide detailed descriptions of *what* the juvenile justice system does, but leaves unanswered how *well* it does.

Gordon Bazemore succinctly captured the distinction between measuring processes and measuring outcomes as by in his monograph on *Performance Measures: Measuring What Really Matters in Juvenile Justice*:

While measurement is not new to juvenile justice, too often data collected by juvenile justice agencies have been unrelated to outcomes, and have seldom allowed the public to assess performance in a meaningful way. This information has not helped juvenile justice systems and organizations determine the impact and cost-effectiveness of their interventions. It has not provided input to juvenile justice professionals regarding public awareness and support for these efforts. It has seldom provided citizens and other government stakeholders with a sense of what it is that juvenile justice systems and agencies are really accomplishing or trying to accomplish.<sup>1</sup>

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<sup>1</sup> Bazemore, Gordon (2006). *Measuring What Really Matters in Juvenile Justice*. Alexandria, VA: American Prosecutor's Research Institute

Bazemore suggests that the lack of development of an outcome-based system of measurement by juvenile justice systems and agencies and the tendency to focus of process data (e.g., number of dispositions, number of probation contacts) rather than outcomes (e.g., number of juveniles that did not re-offend while under supervision in the community) can be attributed to a lack of a clear mission. He suggests that the adoption of the Balanced and Restorative Justice mission in revised juvenile codes in almost half of the States and in policy documents of 10 more states (including Vermont) provides a unique opportunity for “developing measurement standards grounded firmly in community needs and expectations.”<sup>2</sup>

Changes to Vermont’s juvenile justice jurisdiction options may also present a unique opportunity to define, develop, and implement measurement standards grounded in the needs and expectations of Vermont’s needs and expectations relative to juvenile justice. For example, the presence of competing juvenile justice goals was a recurring observation during our site visits and interviews with Vermont juvenile justice professionals. Several *missions* were represented, including crime control (State’s Attorney’s), balanced and restorative justice (Court Diversion Programs, Department of Corrections), social welfare (Department of Children and Families), incapacitation (Department of Corrections). However, a unified, single vision for juvenile justice seems to be elusive. Most of the juvenile justice professionals interviewed during the course of this project indicated a strong need for mission clarity relative to juvenile justice.

What follows is a method and strategy for measuring juvenile justice system performance designed to increase Vermont’s capacity for measuring juvenile justice system outcomes as it copes with changes in juvenile justice system processes required to address system impact of different juvenile justice jurisdiction options.

The strategy presented in this appendix was developed jointly by a partnership between the American Prosecutors Research Institute (APRI), the Balanced and Restorative Justice Project of Florida Atlantic University’s Community Justice Institute, and the National center for Juvenile Justice. The Office of Juvenile Justice and Delinquency Prevention OJJDP of the United States Department of Justice funded the joint national demonstration project that developed the performance measures strategy.

*What is Performance Measurement?* The APRI initiative employed a definition of performance measures used by the Center for Accountability and Performance:

A method of gauging progress of a public program or activity in achieving the results or outcomes that clients, customers, or stakeholders expect....(performance measures tell) people how public programs are doing...<sup>3</sup>

In other words, performance measures are indicators used to assess accomplishment of strategic goals and objectives that support an organization or agency’ mission. Effective performance measure link the agency’s mission to its activities, inform good management, and respond to demands of juvenile justice stakeholders

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<sup>2</sup> Bazemore, Gordon (2006). *Measuring What Really Matters in Juvenile Justice*. Alexandria, VA: American Prosecutor’s Research Institute

<sup>3</sup> Center for Accountability and Performance (2001) *performance measurement: Concepts and Techniques, Third Edition*. Washington, DC: American Society for Public Administration.

Bazemore identifies three primary reasons for measuring performance of publicly funded enterprises. The first justification is normative, the public has a right to know how well publicly funded agencies perform. The second justification is pragmatic, performance measures let organizations know they are doing what they set out to do. The final justification is an empirical / theoretical one, performance measures explain how and why things work as they do; they help us predict, forecast, and evaluate.<sup>4</sup>

*Characteristics Of Good Performance Measures:* The APRI initiative identified several characteristics of good performance measure. First, they must be widely accepted and meaningful; they must reflect the consensus of all key system partners about what is being measured and why. Second, they must clearly and empirically demonstrate that mission-driven goals and objectives are being met. Third, they must be valid (i.e. measure what they are designed to measure) and reliable (e.g., consistent). Fourth, they must be based on individual outcomes (as opposed to aggregate descriptions). Fifth, they must be easily understood and unambiguous. Sixth, they must be produced in an economic and timely fashion. And finally, they must be useful; geared toward continuous improvement.

*Six Key Concepts of Effective Juvenile Justice Performance Measures:* The APRI national demonstration project identified six critical concepts for measuring performance. The first is that effective performance measures are based on a time-tested logic model that begins with a clear and unambiguous mission and leads logically to indicators of goal achievement and desired impact. An effective mission will suggest clear goals. Clear goals are defined by objectives that are empirically measurable. Measures of attainment of objectives are indicators of goal attainment and measure performance. This *logic chain* cannot be broken. One cannot have clear goals, for example, if the agency mission is ambiguous or unclear.

The second key concept has to do with mission clarity and consensus. The logic model dictates that the mission must be clear and unambiguous or goals will be fuzzy, objectives uncertain, and outcomes unreliable. However, mission clarity is not enough on its own. There must be widespread consensus regarding the mission, otherwise an outcome that is valued by one group, may have no value to others and, as a result, becomes less useful.

The third key concept is to clearly define the thing being measured. What exactly is the *intervention* being measured? This was a difficult concept for many of the demonstration site participants as juvenile justice is often perceived as an on-going process with ambiguous beginnings and tenuous endings. The APRI project established the probation intervention as the *thing* to be measured. The intervention begins at the time the case is opened (or assigned to probation) and ends at the time of case closure. What is measured are the accomplishments that occur between the time the case is opened and the time it is closed.

The fourth key concept was to accept *intermediate outcomes* as legitimate outcome measures. Intermediate outcomes are simply indicators that mission-driven, goal-directed

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<sup>4</sup> Bazemore, Gordon (2006). *Measuring What Really Matters in Juvenile Justice*. Alexandria, VA: American Prosecutor's Research Institute

objectives are being achieved. Intermediate outcomes are not necessarily indicators of *fundamental* changes in individuals or systems. For example, because a juvenile successfully completed victim awareness training does not mean that the juvenile has internalized victim awareness, it only means that an objective related to the victim accountability goal of the balanced and restorative justice model has been achieved. While not the final, long-term outcomes, there is great value in these *intermediate outcomes*.

The emphasis of intermediate outcomes means that the “case” becomes the primary unit of measure and that measurements are taken at the time of case closing. This allows for case-level analysis, which can then be aggregated to describe agency or system outcomes. This also means, however that the probation officer / caseworker doubles as data collector which requires a data collection / case closing form, training, justification and concessions from management as most case workers do not become case workers to collect data..

The fifth key concept had to do with data entry and data processing. The widespread availability of automated data entry and data processing programs was critical to the implementation of the performance measures strategy demonstrated by the APRI initiative. Some jurisdictions (South Carolina, for example) adapted their statewide juvenile court management system to accommodate performance measures data input, processing, and reporting. Other jurisdictions used the data processing program (developed in ACCESS) provided by the project to enter and process data and report results.

However, prior to the development of a performance measures database an outcome data form had to be developed that was organized by mission-driven goals recorded the successful completion of objectives. The case closing / data collection form was organized by mission-driven goals, linked explicitly to supervision plan objectives, and focused on intermediate outcomes. It had a dual purpose—it served as a case closing summary and data collection form. A case closing form developed and implemented by Pennsylvania’s Commission on Crime and Delinquency is attached.

The sixth key concept is that quality of data can only be assured by using the data early, often, and in multiple ways. Quality assurance is a concern of anyone using data to make important determinations or decisions. Self-reported data is always of particular concern. The APRI initiative demonstrated that data quality may be enhanced if the data is reviewed by the case worker and supervisor prior to entry and if outcomes are reviewed and applied in meaningful ways (e.g., monthly supervisor meetings, quarterly agency outcome reports, annual system report cards)

*Performance Measures for the Juvenile Justice System-Balanced and Restorative Justice Outcomes:* To be effective a “good mission statement should be more than a broad statement of values that is used for political purposes.” Traditional juvenile justice mission statements such as “serve the best interest of the child” or “protect the public from youth crime” are too broadly stated to establish the clear priorities of a system or agency. A good mission statement “identifies the ‘clients’ of the system; specifies performance objectives; and prioritizes practice while guarding against adoption of fad

programs; identifies roles of staff, offender, victim and community in the justice process.”<sup>5</sup>

The APRI Performance Measures National Demonstration Project was predicated on the balanced and restorative justice mission because it provides clarity regarding who the system “clients,” goals, objectives, and expected outcomes. The balanced and restorative justice mission clearly articulates three goals:

- *Public Safety*: Public safety needs are best met when community groups increase the ability to prevent crime, resolve conflict, and reduce community fear and when known offenders are adequately monitored and develop internal controls.
- *Competency Development*: The ability to do something well that others value; make measurable improvements in educational, vocational, social, civic and other competencies that improve the ability to function as capable, productive adults.
- *Accountability*: The act of taking responsibility for the crime and that harm caused to victims, take actions to make amends by restoring loss.

The APRI Project identified several outcomes for each goal of the Balanced and Restorative Justice Mission.

Goal 1: Creating Safer Communities, as defined by:

- Declining juvenile crime rates, as measured by the annual youth crime rate.
- Juvenile offender desistance in early adulthood, as measured by re-offending in the first year of adulthood for youth formerly under court supervision.
- Crime free short-term supervision, as measured by no new charges in first year of release from supervision.
- Crime free – community supervision, as measured by no new offenses while under supervision.

Goal 2: Competency Development—Skilled and Connected Youth in Capable Communities, as defined by:

- Academic and educational competence, as measured by school attendance.
- Occupational competency, as measured by employment.
- Drug Resistance, as measured by negative drug screens
- Community competency, as measured by volunteer participation.

Goal 3: Accountable offenders and systems, as defined by:

- Completion and payment of restitution orders/agreements, as measured by the percent of cases paying full amount of restitution and proportion of total restitution ordered that was paid.

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<sup>5</sup> Bazemore, Gordon (2006). *Measuring What Really Matters in Juvenile Justice*. Alexandria, VA: American Prosecutor’s Research Institute

- Completion of community service hours, as measured by the percent of cases closed completing all community service hours ordered or assigned and the proportion of total community services ordered or assigned that was completed.
- Victim satisfaction, as measured by results of victim satisfaction surveys.

**Juvenile Justice System Performance Measures for Vermont:** It is not expected that Vermont will simply accept the APRI performance measures as its own. In fact, the logic model suggests that the first step for Vermont is to engage in state-wide strategic planning to clearly articulate and achieve consensus regarding a mission and goals for juvenile justice in Vermont. Each jurisdiction is unique and will create its own set of goals, objectives, outcomes, and output reports. Even jurisdictions that share a common mission in balanced and restorative justice will develop nuanced outcomes based on local characteristics. Whether Vermont continues to lean toward a balanced and restorative justice model as indicated by our assessment or re-affirms its traditional social welfare orientation, Vermont’s juvenile justice professionals will have to achieve consensus around a mission, the priority goals of that mission, goal-driven objectives and outcomes. The system performance measures, however, must be measurable and accessible; concise, limited in number, and easily understood by community members; valid and reliable; capable of employing a common unit of analysis, standard of comparison, and “baseline”; and strength-based rather than deficit-focused.<sup>6</sup>

**Juvenile Justice System Performance Outcomes—Selected Jurisdictions:** Several jurisdictions across the U.S. have implemented the juvenile justice performance measures strategy demonstrated by the APRI initiative, including two states—Pennsylvania and South Carolina—and single jurisdictions in several other states, including Michigan, Ohio, Wisconsin, Montana, Wisconsin, New Hampshire, Arizona, and Colorado.

Pennsylvania’s Juvenile Court Judges’ Commission has produced a state-wide juvenile justice report card annually for three years (2004 to 2006). Some of Pennsylvania’s balanced and restorative justice performance outcomes are summarized in the table below.

	2004	2005	2006
Balanced and Restorative Justice Performance Measure	17,709 Cases Closed	18,803 Cases Closed	17,576 Cases Closed
No new offenses while under supervision	86.7%	87.8%	86.8%
No <i>serious</i> violations of probation	87.8%	89.5%	88.8%
Median Length of Supervision	9.0 months	9.0 months	9.5 months

<sup>6</sup> Harp, C., Bell D., Bazemore, G., and Thomas, D. (2006). *Guide to developing and Implementing Performance Measures for the Juvenile Justice System*. Alexandria, VA: American Prosecutors Research Institute.

Number (%) of cases closed with community service hours ordered or assigned	11,256 (63.6%)	11,816 (62.8%)	12,023 (68.4%)
Total Number of Community Service Hours Completed	550,800	536,196	566,942
Percent of Cases Completing All Community Service Obligations	93.9%	94.2%	94.1%
Number (%) of Cases Closed with Victim Restitution Obligations	4,661 (26.3%)	4,733 (25.2%)	4,508 (25.6%)
Total Amount of Restitution Paid	\$2.14 million	\$2.36 million	\$2.40 million
Percent of Cases Completing All Community Service Obligations	86.2%	85.2%	84.8%
Percent participating in one or more pro-social activities at Case Closing	81%	75%	81%

*Case Closing Form/Links to Additional Materials:* We have attached the case closing/data collection forms developed by APRI and NCJJ and have included the links to selected monographs/publications.

Available from the APRI website:

[http://www.ndaa.org/publications/apri/juvenile\\_justice.html](http://www.ndaa.org/publications/apri/juvenile_justice.html)

- Bazemore, Gordon (2006). *Measuring What Really Matters in Juvenile Justice*. Alexandria, VA: American Prosecutor's Research Institute
- Harp, C., Bell D., Bazemore, G., and Thomas, D. (2006). *Guide to developing and Implementing Performance Measures for the Juvenile Justice System*. Alexandria, VA: American Prosecutors Research Institute.

Available from NCJJ website:

<http://ncjj.servehttp.com/NCJJWebsite/publications/topical/topicalprob.htm>

Thomas, D (2006) *How Does the Juvenile Justice System Measure Up? Applying Performance Measures in Five Jurisdictions*. Pittsburgh, PA: National Center for Juvenile Justice

Thomas, D (2004) *A Vision, a Mission, and a Plan for Strategic Action in Washtenaw County, MI*. Pittsburgh, PA: National Center for Juvenile Justice

Griffin, P. (2003) *Good News: Measuring Juvenile Court Outcomes at Case Closing, 2003*. Pittsburgh, PA: National Center for Juvenile Justice

Torbet, P. and Thomas, D. (2006) *Advancing Competency Development: A White Paper for Pennsylvania*. Pittsburgh, PA: National Center for Juvenile Justice

Bender, V. and King, M. (2006) *Advancing Accountability: A White Paper for Pennsylvania*. Pittsburgh, PA: National Center for Juvenile Justice

**Section 1: Identifying Information and Court Status**

Date of Report: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Name of Juvenile: \_\_\_\_\_  
Unique ID #: \_\_\_\_\_  
Agency: \_\_\_\_\_ Census Tract / Zip Code: \_\_\_\_\_  
Gender:  Male  Female Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Race:  African American  Caucasian  Hispanic  Other \_\_\_\_\_  
Date placed on supervision: \_\_\_\_/\_\_\_\_/200\_\_ At the time of case closing the case was assigned to :  
Date case closed: \_\_\_\_/\_\_\_\_/200\_\_ Judge: \_\_\_\_\_  
Most serious charge at initial disposition: \_\_\_\_\_ Probation officer: \_\_\_\_\_  
Supervisor: \_\_\_\_\_  
Adjudication Status:  Delinquency Offense  Status Offense  
Initial Supervision Status:  Pre-filing: (Specify) \_\_\_\_\_  
 Post-filing: (Specify) \_\_\_\_\_  
 Post-Adjudication: (Specify) \_\_\_\_\_

**Section 2: Law Abiding Behavior**

Were charges filed against the juvenile for committing a new offense while under juvenile court supervision?  Yes  No

**Section 3: Resistance to drugs and alcohol**

Were drug / alcohol tests administered while under supervision?  No  Yes, youth was tested \_\_\_\_ times  
Result of drug / alcohol tests while under supervision:  Tested negative \_\_\_\_ times.  
 Tested positive \_\_\_\_ times for \_\_\_\_\_

**Section 4: Restitution**

Was restitution ordered?  Yes  No Amount of restitution assigned / ordered: \$ \_\_\_\_\_ Restitution paid at time of case closing: \$ \_\_\_\_\_

**Section 5: Community Service**

Was community service assigned?  Yes  No Number of community service hours assigned / ordered: \_\_\_\_\_ Community service hours completed at time of case closing: \_\_\_\_\_

**Section 6: School Participation**

Was youth enrolled in school at time of case closing: No  Yes   
If enrolled in school what is current grade or last grade completed: \_\_\_\_\_  
At the time of case closing, was youth within the mandatory attendance requirements established for his / her school district?  
No  Yes   
If not enrolled in school, why? (Mark All That Apply):  Graduated  Completed GED  Employed  Home schooled  Expelled  Dropped out  Other: \_\_\_\_\_

**Section 7: Reason for Case Closing**

The case summarized in this report was closed because:  
 Juvenile successfully completed court-ordered obligations  
 The case was terminated as an unsuccessful completion.  
Reason for unsuccessful discharge: \_\_\_\_\_  
 Other: Reason (Please Specify): \_\_\_\_\_  
Supervision Status at Case Closing:  Pre-filing: (Specify) \_\_\_\_\_  
 Post-filing: (Specify) \_\_\_\_\_  
 Post-Adjudication: (Specify) \_\_\_\_\_

**Instructions / Definitions / Comments**

***Instructions:***

- Case closing forms are to be completed for each case terminated during the period of the study beginning January 1, 2004.
- The case closing forms are to be completed by the juvenile court or juvenile service officer responsible for case supervision at the time of case closing.
- All data elements must be completed and accurately reflect case supervision outcomes at the time of case closing.
- Each case closing form should be reviewed by a supervisor prior to approval and data entry.
- Data entry may be accomplished in a number of ways. The preferred way, however, is to identify a single point of data entry and assign one or more staff with the responsibility for entering data. Data entry staff should be carefully trained regarding the project purpose, the data entry form, the data elements, and expected output reports. The “team leader” in each jurisdiction should have responsibility for oversight and quality assurance of the data collection and data entry process.
- Completed data entry forms should be placed in the juveniles’ case files; at least one copy of each case closing / data entry form should be kept in a separate file as back-up and for review purposes. The team leader in each jurisdiction should have responsibility for maintaining the case closing / data entry form back-up file.
- Data extracts should be forwarded to NCJJ at the end of each month.
- Monthly data output reports produced by NCJJ should be reviewed by the teams from each jurisdiction and shared with staff to the extent possible.

***Section 1: Identifying Information and Court Status***

*Date of Report:* Enter the date on which the report is completed and approved by whomever is responsible for approving case closing reports (e.g., the immediate supervisor).

*Name of Juvenile:* Enter the juvenile’s name. To protect confidentiality, this information will be in each jurisdiction’s system only and will not be forwarded to the central data repository (NCJJ).

*Unique ID #:* Enter a unique number to identify each juvenile. For the sake of simplicity, you should use whatever unique identifier system that is already in place in your jurisdiction and not generate a separate unique id# for this project. The data extract program will automatically separate data by jurisdiction, that should cover the remote chance that two cases from different jurisdictions will have the same number.

*Agency:* Enter the name of your agency. This is primarily for the paper and pencil form, the ACCESS data base will automatically designate the agency after initial set-up.

*Census Tract / Zip Code:* Enter either the zip code or the census tract number for the juvenile’s place of residence. This data element is primarily for each individual jurisdiction; the data is very useful for local evaluation and planning purposes.

*Gender:* Enter the juvenile’s gender.

*Date of Birth:* Enter the date of birth for each juvenile. The age will be automatically calculated and appear on the data entry screen.

*Race:* Enter the juvenile’s race.

*Date placed on supervision:* Enter the date that juvenile court staff accepted responsibility for supervision of the case (e.g., the date of the consent decree, formal accountability agreement, placed on formal probation).

*Date case closed:* Enter the date that case was formally closed and the juvenile was released from juvenile court supervision.

*Most serious charge at initial disposition:* Enter the most serious charge at initial disposition of the case whether informal or formal from the list provided on the drop-down screen ( a key will be provided for those entering data on the paper form). This item, as we discussed, may be subject to subjective decisions by data suppliers. We will leave the final determination to the professional judgment of staff and supervisors in each of the jurisdictions.

*At the time of case closing the case was assigned to:* Enter the persons responsible for the case at the time of case closing, including judicial officers, juvenile probation officers, and supervisors. This is also one of the data elements included for local use. By designating the persons responsible for supervision and case closure, jurisdictions can analyze output data by responsible parties (e.g., a juvenile probation officers report, a supervisors report, a judges report). Each jurisdiction will have the capacity of customizing their data base with staff and judicial officer lists.

*Adjudication Status:* Designate either delinquency or status offense.

*Initial Supervision Status:* This item will be completed in two parts. First, indicate whether the case is supervised *before filing*, *after filing*, or *after adjudication*. Second, specify the nature of the supervision (e.g., accountability agreement, consent decree, formal probation, placement) using whatever terminology is appropriate for your jurisdiction. Each jurisdiction will have the capacity of customizing their *adjudication status* on a drop-down menu.

## **Section 2: Law Abiding Behavior**

*Were charges filed against the juvenile for committing a new offense while under juvenile court supervision?* Indicate if charges were filed against juveniles for committing one or more new offenses while under juvenile court supervision.

## **Section 3: Resistance to drugs and alcohol**

*Were drug / alcohol tests administered while under supervision?* Indicate if drug / alcohol tests were administered to the juvenile while under juvenile court supervision.

*Result of drug / alcohol tests while under supervision.* Indicate if drug / alcohol tests were negative; and how many negative results were obtained; or if they were positive and how many positive results were obtained and for which drugs.

## **Section 4: Restitution**

*Was restitution ordered?* Indicate (Yes or No) if restitution was ordered or assigned.

*Amount of restitution assigned / ordered:* Indicate dollar amount (to the nearest dollar) of restitution ordered or assigned.

*Restitution paid at time of case closing:* Indicate dollar amount (to the nearest dollar) of restitution paid at the time of case closing.

## **Section 5: Community Service**

*Was community service assigned?* Indicate (Yes or No) if community service was ordered or assigned.

*Number of community service hours assigned / ordered.* Indicate hours of community service ordered or assigned.

*Community service hours completed at time of case closing.* Indicate the number of hours of community service completed at the time of case closing.

## **Section 6: School Participation**

*Was youth enrolled in school at time of case closing?:* Indicate (Yes or No) if youth enrolled in school at time of case closing.

*If enrolled in school what is current grade or last grade completed?* If enrolled in school, indicate current grade or last grade completed at time of case closing.

*At the time of case closing, was youth within the mandatory attendance requirements established for his / her school district?* Indicate (Yes or No) if youth was in compliance with local mandatory attendance requirements at the time of case closing.

*If not enrolled in school, why?:* Indicate reason the juvenile is not enrolled in school (e.g., Graduated, Completed GED, Employed, Home schooled, Expelled, Dropped out, or specify other reason(s).)

***Section 7: Reason for Case Closing***

*The case summarized in this report was closed because:* Indicate the reason the case was closed (e.g., juvenile successfully completed court-ordered obligations; the case was terminated as “unsuccessful” and give the reason for the unsuccessful discharge, or specify other reason

*Supervision Status at Case Closing:* This item is identical to the one in Section 1 and will be completed in two parts. First, indicate whether the case was being supervised *before filing*, *after filing*, or *after adjudication* at the time of case closing. Second, specify the nature of the supervision at the time of case closing (e.g., accountability agreement, consent decree, formal probation, placement) using whatever terminology is appropriate for your jurisdiction. Each jurisdiction will have the capacity of customizing their *adjudication status* drop-down menu.

**Excerpt from Connecticut Public Act No. 07-4, Laws of 2007**

Sec. 88. (*Effective from passage*) (a) There is established a Juvenile Jurisdiction Policy and Operations Coordinating Council. The council shall monitor the implementation of the central components of the implementation plan developed by the Juvenile Jurisdiction Planning and Implementation Committee, as set forth in subsection (f) of this section, and resolve issues identified by the committee, as set forth in subsection (g) of this section, concerning changes required in the juvenile justice system to expand jurisdiction to include persons sixteen and seventeen years of age.

(b) The council shall consist of the following members:

(1) Two members of the General Assembly, one of whom shall be appointed by the speaker of the House of Representatives, and one of whom shall be appointed by the president pro tempore of the Senate;

(2) The chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary, human services and appropriations, or their designees;

(3) The Chief Court Administrator, or the Chief Court Administrator's designee;

(4) A judge of the superior court for juvenile matters, appointed by the Chief Justice;

(5) The executive director of the Court Support Services Division of the judicial branch, or the executive director's designee;

(6) The executive director of the Superior Court Operations Division, or the executive director's designee;

(7) The Chief Public Defender, or the Chief Public Defender's designee;

(8) The Chief State's Attorney, or the Chief State's Attorney's designee;

(9) The Commissioner of Children and Families, or the commissioner's designee;

(10) The Commissioner of Correction, or the commissioner's designee;

(11) The Commissioner of Education, or the commissioner's designee;

(12) The Commissioner of Mental Health and Addiction Services, or the commissioner's designee;

(13) The president of the Connecticut Police Chiefs Association, or the president's designee;

(14) Two child or youth advocates, one of whom shall be appointed by one chairperson of the Juvenile Jurisdiction Planning and Implementation Committee, and one of whom shall be appointed by the other chairperson of the Juvenile Jurisdiction Planning and Implementation Committee;

(15) Two parents, each of whom is the parent of a child who has been involved with the juvenile justice system, one of whom shall be appointed by the minority leader of the House of Representatives, and one of whom shall be appointed by the minority leader of the Senate; and

(16) The Child Advocate, or the Child Advocate's designee.

(c) All appointments to the council shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The Secretary of the Office of Policy and Management, or the secretary's designee and a member of the General Assembly selected jointly by the speaker of the House of Representatives and the president pro tempore of the Senate shall be cochairpersons of the council. Such cochairpersons shall schedule the first meeting of the council, which shall be held not later than sixty days after the effective date of this section.

(e) Members of the council shall serve without compensation, except for necessary expenses incurred in the performance of their duties.

(f) Prior to January 1, 2009, the council shall monitor the implementation of the central components of the implementation plan contained in the final report of the Juvenile Jurisdiction Planning and Implementation Committee dated February 8, 2007, including, but not limited to, the development and implementation of a comprehensive system of community-based services and residential services for juveniles.

(g) Prior to January 1, 2009, the council shall study and develop recommendations regarding the issues identified in the final report of the Juvenile Jurisdiction Planning and Implementation Committee to prepare for the introduction of persons sixteen and seventeen years of age into the juvenile justice system and to improve the juvenile justice system. Such issues and study shall include, but need not be limited to, the following:

(1) The development of diversion programs and the most appropriate programs for such persons;

(2) The development of comprehensive projections to determine the short-term and long-term placement capacity required to accommodate an expanded juvenile population in the juvenile justice system, including an identification of available pretrial detention

facilities, the need for additional pretrial detention facilities and feasible alternatives to detention;

(3) An analysis of the impact of the expansion of juvenile jurisdiction to persons sixteen and seventeen years of age on state agencies and a determination of which state agencies shall be responsible for providing relevant services to juveniles, including, but not limited to, mental health and substance abuse services, housing, education and employment;

(4) An examination of the emancipation of minors with respect to the juvenile justice system;

(5) An examination and modification of offenses categorized as serious juvenile offenses in subdivision (12) of section 46b-120 of the general statutes, as amended by this act;

(6) A comparison and analysis of procedures used in the juvenile justice system versus the criminal court system to determine the most suitable procedures for juveniles, including, but not limited to, the most suitable procedures for the lawful interrogation of juveniles;

(7) An examination of school-related issues related to delinquency, including intervention strategies to reduce the number of suspensions, expulsions, trancies and arrests of juveniles;

(8) An examination of practices and procedures that result in disproportionate minority contact with the juvenile justice system and strategies to reduce disproportionate minority contact with the juvenile justice system; and

(9) An examination of whether the inclusion of persons sixteen and seventeen years of age in the juvenile justice system requires a revision of provisions of the general statutes that establish a mandatory age for school attendance.

(h) Not later than January 1, 2008, and quarterly thereafter until January 1, 2009, the council shall submit a status report to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary, human services and appropriations, and the select committee of the General Assembly having cognizance of matters relating to children, in accordance with section 11-4a of the general statutes, on implementation of the plan components set forth in subsection (f) of this section and resolution of the issues identified in subsection (g) of this section.

(i) Not later than January 1, 2009, the council shall submit a final report on the council's recommendations and such implementation and resolution of issues to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary, human services and appropriations, and the select committee of the General Assembly having cognizance of matters relating to children, in accordance with section 11-4a of the general statutes.

# JJPIC:

## Proposed Court and Service System for 16 & 17 year olds

January 4, 2007

The State of Connecticut Judicial Branch  
Court Support Services Division

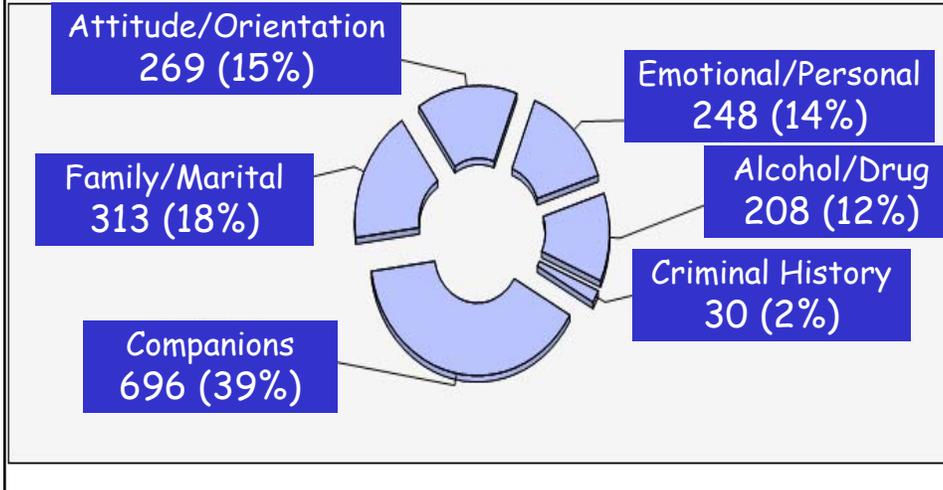
1

## Target population: How Many 16 and 17 Year Olds Are Court Involved?

- 12,000+ annual cases involving 16 and 17 year olds statewide
- 10,000 individuals referred
- 2,256 sixteen and seventeen year olds are placed on adult probation statewide, annually

2

## Primary Risk Assessment Factors Among 16-17 Year Olds in CT



## Adult-Juvenile Differences Volume, Philosophy, Orientation

### ■ Criminal Court

Larger caseloads averaging 1:120

Post conviction

Focus on the specific offense, accountability, behavior change

Services designed for adults

### ■ Juvenile Court

Smaller caseloads averaging 1:40

Case assignment from intake

Focus on prevention, family engagement & treatment services

Age appropriate services

4



## Judicial Branch's Recommended Plan for Managing Youth as Juveniles

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5

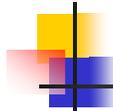


## Judicial Branch's Tenets for Program and System Development

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- Community Safety
- Developmentally Appropriate
- Strength Based
- Family Inclusive
- Trauma Sensitive
- Community Based
- Culturally Competent & Gender Responsive
- Based on Juvenile Need/Risk Level

6

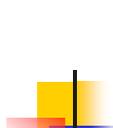


## Projected Outcomes

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- Lower rearrest rates
- Fewer youth incarcerated, placed or hospitalized
- Reduced use of illicit substances
- Reduced minority representation
- More youth completing school
- Increased engagement in prosocial activities
- Better family functioning
- Improved community safety

7



## Two Phases of CSSD's Four Point Plan

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- A. January 2008 – January 2009
  - Begin to address needs of 16 and 17 year olds
  - Build an experienced core group of Probation and Program Providers
- B. January 2009
  - Core group ready to serve newly established Regional Youth Courts

8



## Judicial Branch's Four-Point Plan

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1. Modify Probation Workforce (1/08)
2. Adapt Juvenile Service Delivery System (1/08)
3. Create New Programs for Youth (1/09)
4. Establish Infrastructure to Ensure Positive Outcomes (On-Going)

9

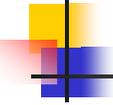


## 1. Probation Workforce

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- Rely on veteran Probation Officers to lead and work in New Regional Courts for 16 and 17 year olds
- Train Probation Officers with contracted service Providers to reinforce “teaming” cases and teach a case management / partnership approach

10



## 2. Expanded Contract Strategies

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- Adapt Existing Juvenile Programs
  - Clinical Evaluations
  - Mental Health Treatment & Treatment for Problem Sexual Behavior
  - Home-based Therapies
  - Social Skill Development / Anger Management / Impulse Control
  - Girls Groups & Trauma Recovery
  - Education / Vocation (where possible)
  - Juvenile Review Boards & Diversion

11

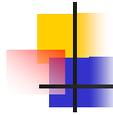


## 3. New Contract Strategies

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- Establish New Youth Programs
  - Educational & Vocational Supports
  - Transitional Housing
  - Other

12



## 4. Infrastructure

- Ensure effectiveness by assigning staff to training, implementation, and quality assurance
- Conduct research and measure outcomes
- Apply Results-Based Accountability principles and practices

13

Timeline				
	1/08	7/08	1/09	7/09
Probation Officers				
Services				
Regional Juvenile Court Communities				



## Advantages to Proposed Plan

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- Sixteen and seventeen year old youth begin to access developmentally appropriate services by January 2008
- 12 month period before law goes into effect is used to train and prepare program and service provider staff
- Existing services are expanded upon and new services are created

15



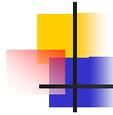
## Staffing the Regional Court Model

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### Assumptions

- 9 court locations initially, 11 when new Torrington and Middletown Courts are completed
- use existing or planned court facilities, avoiding costs and delays associated with new construction

16



## Staffing the Regional Court Model

### Additional Staff needed\*

- 5 Superior Court Judges
- 41 Support Staff
- 8 Court Interpreters
- 5 Victim Advocates
- 56 Judicial Marshals
- 115 Total new staff required**

\*excluding probation, Torrington and Middletown courts, and other agencies (Public Defender and State's Attorney)

Timeline				
	1/08	7/08	1/09	7/09
Probation Officers	1st group of POs take cases	2nd group of POs take cases	3rd group of POs take cases	4th group of POs take cases
Services	<ul style="list-style-type: none"> <li>•Clinical Assessments</li> <li>•MH, SA and PSB Treatment</li> <li>•Home-Based Therapy</li> <li>•Skills Enhancement</li> <li>•Education / Vocation</li> </ul>	<ul style="list-style-type: none"> <li>•Clinical Assessments</li> <li>•MH, SA and PSB Treatment</li> <li>•Home-Based Therapy</li> <li>•Skills Enhancement</li> <li>•Education / Vocation</li> </ul>	Begin to establish new services (Diversion, JRB and Transitional Housing)	Programs fully operational
Regional Juvenile Court Communities	New Haven 384 Hartford 384 Waterbury 338 New Brit. 316 Bridgeport 181 Manch. 158	Waterford 158 Middletown 135 Norwalk / Stamford 135 Willimantic 68		