



October 26, 2023

Vermont Joint Legislative Justice Oversight Committee
115 State Street
Montpelier, VT 05633-5301

Re: Testimony regarding high-end system of care

Via email to: PDelaney@leg.state.vt.us

Dear Chair Sears and Members of the Joint Legislative Justice Oversight Committee:

Thank you for the opportunity to testify on behalf of the children, youth, and families in the juvenile justice system in Vermont. As you know, the Office of the Child, Youth, and Family Advocate, which you helped create, is a voice for children, youth, and families in the child protection and juvenile justice systems. It is clear to our Office that Vermont has a great deal of work to do to improve its high-end system of care for young people. We would like to focus this testimony on what we consider the essential principles in considering the future of our juvenile justice system.

First, any effort to make policy or create placements for young people should center those young people. Vermont does an admirable job protecting the identities of youth in the foster care and juvenile justice systems. Confidentiality should not prevent their voices from reaching the legislature. We feel that there is room for more youth voice in this conversation and we ask that the legislature make space to hear from the youths themselves in future hearings.

Before Vermont designs a system that houses and treats children, it is imperative to understand the young people in question, both qualitatively and quantitatively. How many youths currently make up the high-end system of care? How many youths are currently in inappropriate placements? What are their needs, in terms of physical health, mental health, education, and community involvement? What treatment will address those needs? What evidence-based practices will be implemented to serve these young people? Who will conduct oversight of the entities in question? Will youths over age 18 share facilities with youths under age 18?

The lack of this information complicates our ability to understand the need for additional facilities. If we create programs and placements without first understanding need, we risk fitting kids to placements, rather than vice versa.

Just yesterday, we visited with three young people served by the juvenile justice system in three separate placements in southern Vermont. One is a youth who lacks an appropriate placement and is being “staffed” around the clock by DCF FSD workers. This youth has had no educational or therapeutic programming and no contact with peers for weeks. It appears that they spend most of their day watching television. A second youth recently returned from an out of state placement and is currently in a setting that also lacks individualized treatment. A third is a “Raise the Age” youth who completed a local program and is about to turn 18. This youth resides in an apartment-like setting and is on track to successfully rejoin the community.

Each of these young people have specific needs. It is unclear how the proposed high-end system of care would serve them better. Terms such as “short term stabilization” and “crisis stabilization” are hard to distinguish and to envision.¹ We understand and applaud the need to replace punitive terminology with treatment-centered language and concepts, but we are concerned that the “HESOC” framework may obscure the true level of need. Our understanding is that the “levels of care” DCF uses in its report describe three existing types of entity: licensed Residential Treatment Programs (“RTPs”), licensed Psychiatric Residential Treatment Facilities (“PRTFs”), and unlicensed facilities. It would be helpful to name the type of licensure DCF anticipates each “level of care” will hold. A clear understanding as to whether the settings described will be RTPs, PRTFs, or will operate without a license will ensure that we truly understand the level of oversight and accountability that each will necessitate.

At the time of the Raise the Age implementation in 2019, DCF’s Senior Advisor to the Commissioner recommended that “DCF should continue its aim of operating a continuum of care for residential treatment/out of home placements for *all* youth in the delinquency system.”² Four years later, we believe that focus should be the same, with a strong preference on developing more in-home or homelike settings. Vermont has historically utilized congregate care at a rate higher than the national average.³ It appears that the “HESOC” initiative aims to expand the congregate care system, partly to ensure that Vermont youth who need residential treatment can remain in the state rather than leave it. But the specifics are unclear. The repeated usage in the report of “generalized therapeutic programming” (p. 2) is concerning.

¹ DCF Raise the Age, High End System of Care Status Update in Accordance with Act 23, Section 14, [Act-23-Status-Report-September-2023.pdf \(vermont.gov\)](#) (“report”), at 3.

² Karen Vastine and Lael Chester, “Act 201 Implementation: Vermont’s Raise the Age Initiative,” Joint Justice Oversight Presentation, November 13, 2019, Slide 38 (emphasis in original).

³ See [Vermont Child Welfare Measures \(fosteringcourtimprovement.org\)](#).

There is another way to reduce the need for more treatment “beds,” and that is to reduce the number of children and youth requiring a residential level of care. Prior to the pandemic, Vermont’s Agency of Human Services launched an initiative “to reduce the number of children and youth in residential treatment settings through increasing community and family supports...so more children and youth are placed in family settings in their community.”⁴ The pandemic interrupted this work, but it remains crucial. Other states have engaged Casey Family Programs in a targeted examination of youth who qualify for residential care with an eye to finding appropriate relatives and community supports in lieu of more restrictive settings. Vermont could do the same.

Another step Vermont could take is to reduce its high rate of children in foster care. Vermont is rated as one of the best states in the nation in which to be a child, but ranks near the bottom in the number of children per 1000 in foster care.⁵ At the close of 2022, there were 1,067 children in state custody; 487 conditionally ordered by a court back to their home, relative, or community member; and 197 receiving ongoing services after an investigation or assessment indicated a very high risk of maltreatment—1750 children in all.

Perhaps the most important action Vermont could take is to fully commit to the federal Family First Prevention Services Act (“FFPSA”). FFPSA is an uncapped source of millions of dollars under Title IV-E of the Social Security Act that could pay for evidenced-based community prevention services, peer supports, legal services, GAL training, and a wide array of community services. These federal funds could replace a significant share of our current reliance on state general fund dollars. Yes, full implementation of FFPSA will require a lot of work and significant matching state dollars. But it is hard to think of a more worthwhile investment in the children, youth, and families of Vermont. Prevention is both a fiscal and a moral imperative. We would like to see DCF publicly clarify its commitment to engage in prevention work using FFPSA funding.

We are glad to see DCF’s articulation of the “core values foundational to the creation and development of holistic residential treatment settings” (report, p. 4). We trust that DCF will provide more detail on proposed physical spaces as information becomes available. We hope that any facility will follow national best practices that promote light, access to nature, and community involvement in our juvenile justice system to the maximum extent possible. We understand the immense challenges with our current mental health system, and we recognize that DCF is working very hard to enhance and bolster placements for youth amidst a crisis. We recognize that there are some young people who need the containment of a hospital setting to keep them safe, at least for a short time. We have also seen that the safety of our communities sometimes requires that a youth be in a locked environment. However,

⁴ See, e.g., Vermont Agency of Human Services, Residential Turn the Curve Advisory Committee, “[Regional and State Residential Data FY2023 Quarter 4](#)”.

⁵ [Children ages birth to 17 in foster care | KIDS COUNT Data Center \(aecf.org\)](#).

we believe that the number of youths requiring this highest level of security is small, usually fewer than 10 at any given time. The crisis seems to be in our residential system of care, not in our lack of locked facilities.

Children are more likely survivors of violence and abuse than its perpetrators. A high percentage of young people who commit crimes were also victims. Youth who are maltreated are more likely than non-maltreated youth to have contact with the juvenile justice system.⁶ Black youth in Vermont face criminal sanctions at rates up to ten times their proportion in the state population.⁷

Vermont has a duty to ensure that young people receive developmentally appropriate programming and services that increase public safety, while also ensuring that Vermont youth do not face unnecessary barriers that prevent them from becoming thriving members of our state, region, and nation.

Vermont’s high-end system of care demands comprehensive and courageous policymaking.

Sincerely,



Matthew Bernstein, Esq.
Vermont Child, Youth, and Family Advocate



Lauren Higbee, MSW
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⁶ Unless otherwise noted, citations this paragraph are from: [Literature Review: Intersection of Juvenile Justice and Child Welfare Systems | Office of Juvenile Justice and Delinquency Prevention \(ojp.gov\)](#).

⁷ DCF, “Findings Related to Racial Disparities in Vermont’s Youth Justice Response – 2021,” September 2022.” [CFCPP- Findings-Racial-Disparities.pdf \(vermont.gov\)](#), p. 11.