

## Update on the Implementation of Vermont's "Raise the Age" Law: Decline in Delinquency Caseloads After 18-Year-Olds Added To the Juvenile Justice System; Incorporation of 19-Year-Olds Next

February 2024\*

Lael E. H. Chester and Maria León<sup>1</sup>

In May 2018, Vermont Governor Phil Scott signed Act 201, otherwise known as the "Raise the Age" Bill, into law. This historic legislation gradually raises the upper age of family court jurisdiction from the 18<sup>th</sup> to the 20<sup>th</sup> birthday while still prosecuting youths as adults for the most serious offenses (known as the "Big 12").<sup>2</sup> The implementation dates are staggered: As of July 1, 2020, 18-year-olds began to be prosecuted in the Family Division. On July 1, 2024, 19-year-olds will be included in the juvenile system. The original date for incorporating 19-year-olds in the juvenile system was set for July 1, 2022. During the COVID-19 pandemic, the Legislature pushed back the implementation twice (to July 1, 2023, and more recently to July 1, 2024). **The purpose of this legislation was to increase public safety: By providing more effective, developmentally appropriate responses to system-involved youth, Vermont's law seeks to support youth in desisting from crime and successfully transitioning into healthy adulthood.**

Vermont undertook an extensive planning process to prepare for the first phase of implementation, resulting in a written "Implementation Plan"<sup>3</sup> co-authored by the Vermont Department for Children and Families (DCF) and the Emerging Adult Justice Project, which was submitted to the Legislature on November 1, 2019. At the time,

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\* This report was originally published in January 2024 and has been updated to reflect the fact that the upper age of juvenile jurisdiction was raised to the 19<sup>th</sup> birthday in Fiscal Year 2021. The original publication included the date of implementation as July 1, 2020, which is correct, but mistakenly listed this as Fiscal Year 2020.

<sup>1</sup> Lael Chester is Director of the Emerging Adult Justice Project and Maria León is the Senior Manager of Research Advocacy for Youth Justice at the Columbia University Justice Lab.

<sup>2</sup> Vermont's Family Court handles juvenile delinquency cases.

<sup>3</sup> The report can be found at <https://legislature.vermont.gov/assets/Legislative-Reports/20191101-Vermont-RTA-DCF-Report-Final.pdf>

there was a fear that the delinquency caseloads would increase with the addition of 18-year-olds. Consequently, the Implementation Plan provided concrete recommendations that would reduce the caseloads and/or make the process as efficient as possible. For example, one recommendation focused on how Vermont could leverage the existing statewide youth diversion services to successfully serve low-level cases outside of the formal judicial system. This allows the Family Division and other youth justice stakeholders to focus on the cases that are more appropriate for formal processing. Other recommendations included enhancing the DCF operational plan and maximizing the efficiency of the Family Division.

There is insufficient information publicly available to determine whether Vermont has adopted these and other recommendations, but the Emerging Adult Justice Project at the Columbia University Justice Lab has sought to determine the impact of Raise the Age on Vermont's delinquency caseloads,<sup>4</sup> an important factor to consider as it prepares for the addition of 19-year-olds into the juvenile justice system in July 2024. The data show that over three years post-partial implementation of the Raise the Age Law, the delinquency caseloads have decreased, despite the addition of 18-year-olds in the juvenile justice system.

### **Limited number of 18-year-olds were processed in the Family Court during the first 6 months of the implementation of Phase 1 of the Raise the Age law, with high rates of diversion**

During the first six-month period when 18-year-olds were included in Vermont's juvenile system (from July 1, 2020 - December 31, 2020), DCF reported that there were 41 youth charged with a delinquency offense(s) allegedly committed when age 18. Fifteen of these youth (37%) had their cases diverted, resulting in 26 youth who had delinquency cases proceed.<sup>5</sup> Information on the outcome or disposition of these cases has not been publicly shared.

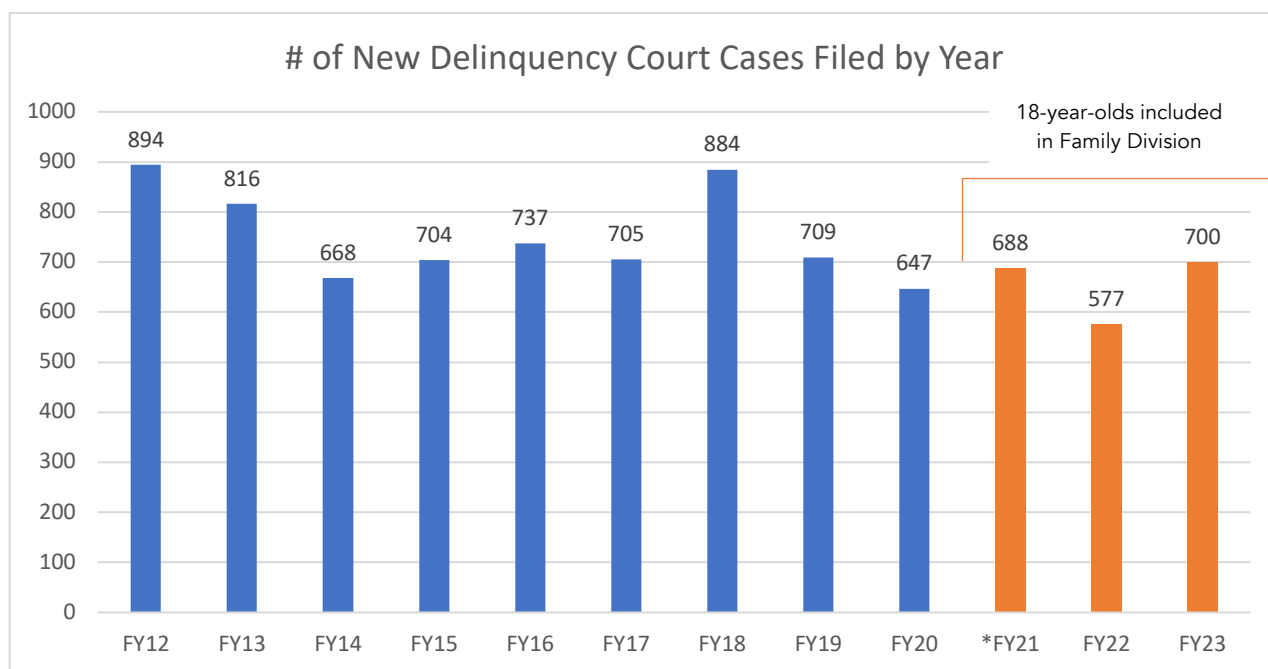
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<sup>4</sup> Caseload data could be found for only three points of contact: court filings, probation, and DCF custody. The publicly available data did not include other points of contact like arrests, findings of merit, dispositions, etc., or demographic information like age, gender, or race.

<sup>5</sup> The data was sent via email by DCF to Lael Chester at the Columbia University Justice Lab on March 9, 2021.

## Overall decline in the number of filings for delinquency cases in the Family Division for all youth

As of this writing there appears to be no publicly available data reporting the number of delinquency cases of 18-year-olds filed in the Family Division since the initial 6-month period of Phase 1 of Raise the Age (RtA). Vermont has, however, reported on the number of delinquency cases filed each year for all youth (which, starting on July 1, 2020, included youth who allegedly committed an offense before the 19<sup>th</sup> birthday) and the results are encouraging: Despite incorporating the cases of most 18-year-olds into the juvenile justice system in FY21, the chart below shows that the delinquency case filings have remained fairly stable and, in fact, declined since a high in FY18, before 18-year-olds were added to the juvenile delinquency system.



Data for FY12-FY22 comes from DCF FSD Vermont's 2024 Annual Progress and Services Report found at <https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Reviews/APSR2024.pdf>.

Data for FY23 comes from the VT Office of the Attorney General December 2023 Report to the Legislature On Court Diversion and Pretrial Services found at <https://legislature.vermont.gov/assets/Legislative-Reports/Pretrial-Services-Court-Diversion-Rpt-to-Gen-Assembly-12.1.23.pdf>.

It would be reasonable to assume that there will be an increase in the number of delinquency cases filed when Vermont implements Phase Two of RtA and incorporates 19-year-olds in the juvenile system. But, as with the recent example of the implementation of Phase 1, any increase is likely to be minor and temporary, if there is an increase at all. As noted in the 2019 Implementation Plan submitted to the Legislature, the vast majority of criminal prosecutions involving 18- and 19-year-olds in

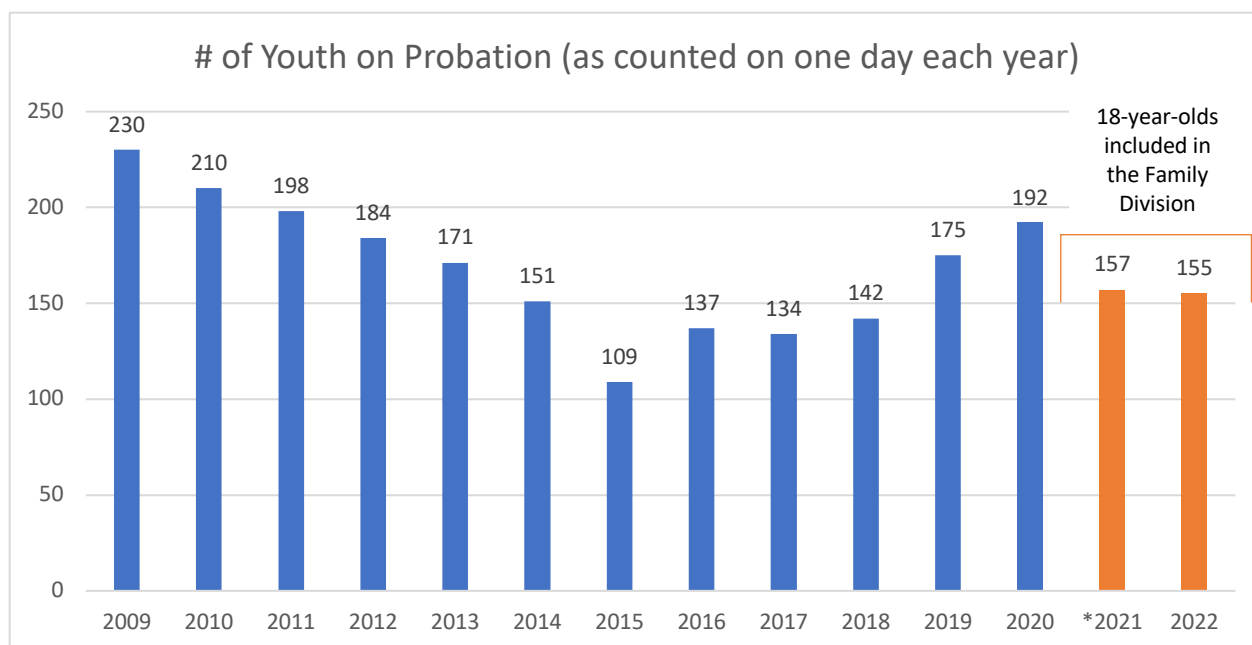
Vermont, 85%, were for misdemeanor offenses, and over 40% of all the post-conviction dispositions resulted in a fine only. This indicates that at least one-third of all cases involving 19-year-olds could be appropriately diverted from the system, as data showed for 18-year-olds in the first six months of Phase 1 implementation. In addition, Vermont now has experience expanding the system and has had more time to address the recommendations included in the State's Implementation Plan, which should help ensure a smooth transition for Phase 2.

### **6-year trend of increasing number of youths on probation for delinquency cases reverses and declines *after* Phase 1 of Raise the Age is implemented**

Data show that the number of youths on probation for delinquency cases reached a record low in 2015, with 109 youths on probation, and then rose to 192 in 2020, the year 18-year-olds began to be included in the juvenile justice system. Then from calendar years 2020 to 2022, the number of youths on probation declined by 19% to 155.<sup>6</sup>

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<sup>6</sup> It should be noted that these data are useful to show general trends but are limited in value since the number of youths on probation were recorded on different dates for each year. DCF reports the number of youth on probation were counted on the following dates: July 6, 2010, April 4, 2011, June 2, 2012, June 5, 2013, April 2, 2014, July 6, 2015, June 9, 2016, July 31, 2017, June 6, 2018, May 28, 2019, June 1, 2020, June 1, 2021, and June 21, 2022 (although the report lists "6/21/23," we assume that this was just a typographical error because that date had yet to occur).

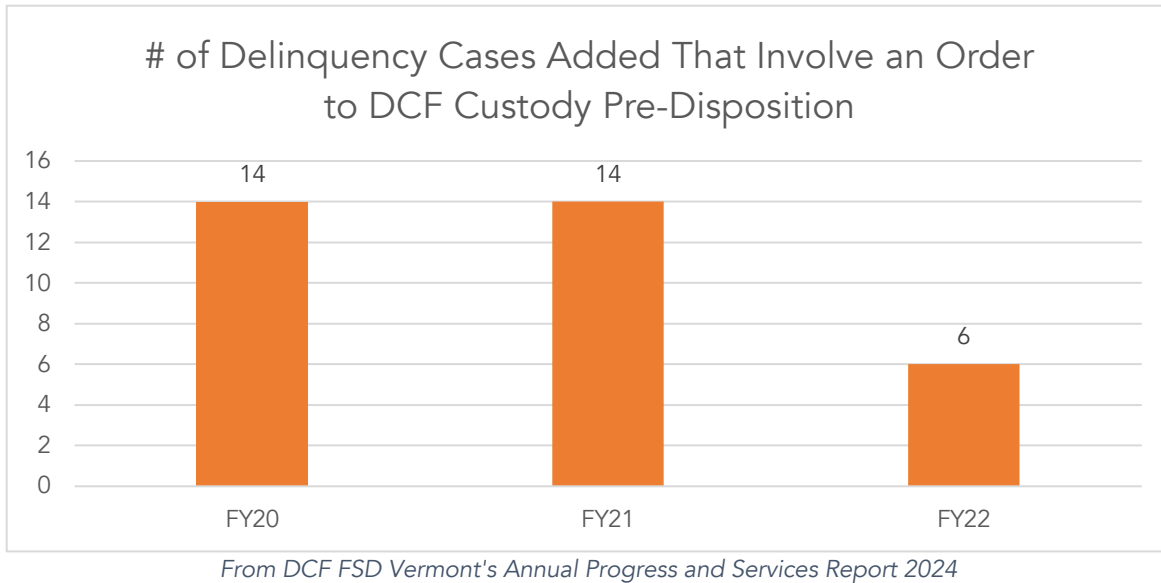


*From DCF FSD Vermont's Annual Progress and Services Report 2024*

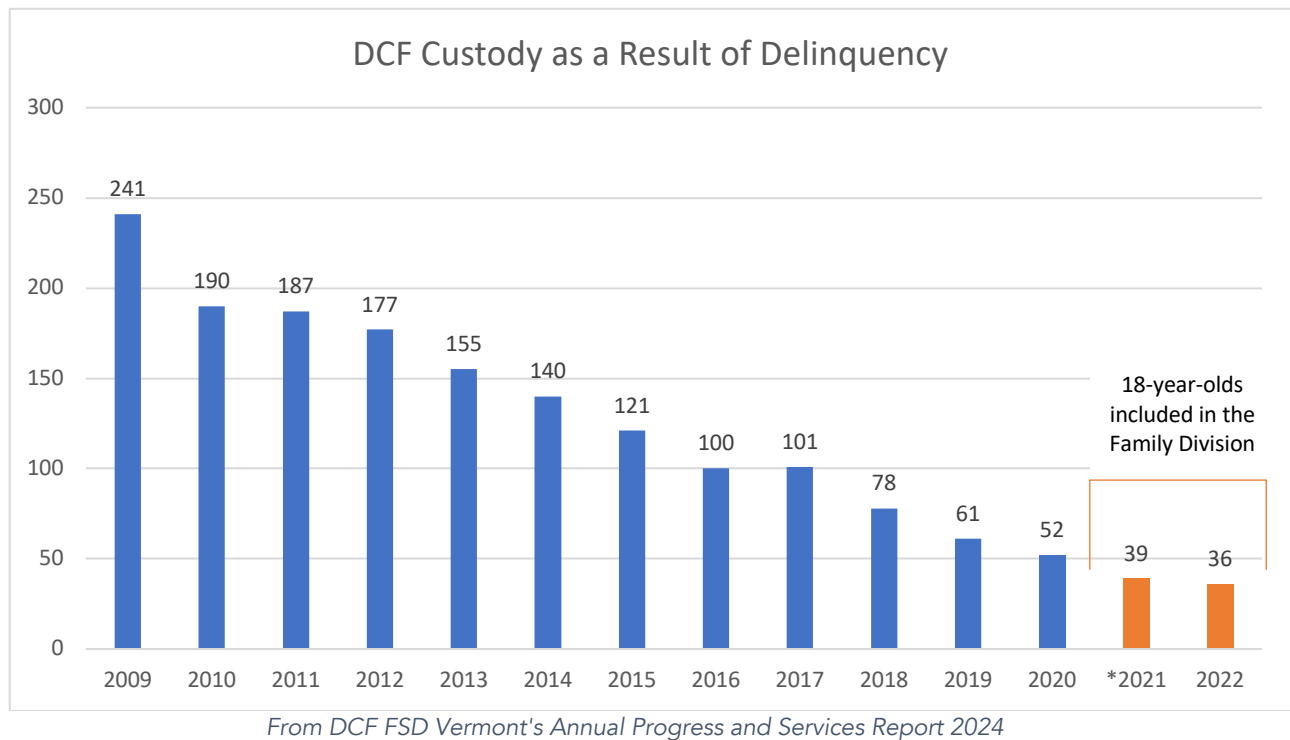
**For over a decade, a dramatic decline in number of youths ordered to DCF custody due to a delinquency case, including decline *after* Phase 1 of RtA implemented in FY2021**

Youth can be ordered to DCF custody for delinquency cases both pre- and post-disposition and, in both situations, there has been a decline in such orders in Vermont since RtA has been implemented.

For the last three fiscal years, there have been few youths ordered to DCF custody pre-disposition: There were 14 pre-disposition cases that included an order to DCF custody in FY20 and in FY21, and there were only 6 pre-disposition custody cases in FY22.



Each year, DCF conducts a count on or about December 31 of the number of youths in its custody *post-disposition* as a result of delinquency cases. From FY2009 to FY2022, there was a dramatic decline of 85%. The decline continued even *after* 18-year-olds were included in Vermont's juvenile justice system.



It is fair to expect a slight increase in custody cases when phase two of RtA is implemented. However, given that custody cases did not increase when 18-year-olds were phased in, this prediction may not come to bear and, if it does, it would likely be, at most, a modest increase and temporary (as with probation caseloads).

## Conclusion

When Vermont passed its Raise the Age legislation (Act 201), it became the first state in the country to acknowledge that emerging adults are in a distinct stage and are better served by the individualized and more developmentally appropriate treatment provided in the youth justice system. It did so in response to a robust body of research showing that emerging adults share similar characteristics to their younger peers and that they are likely to desist from crime if provided services, programs, and opportunities that support the healthy transition to adulthood.

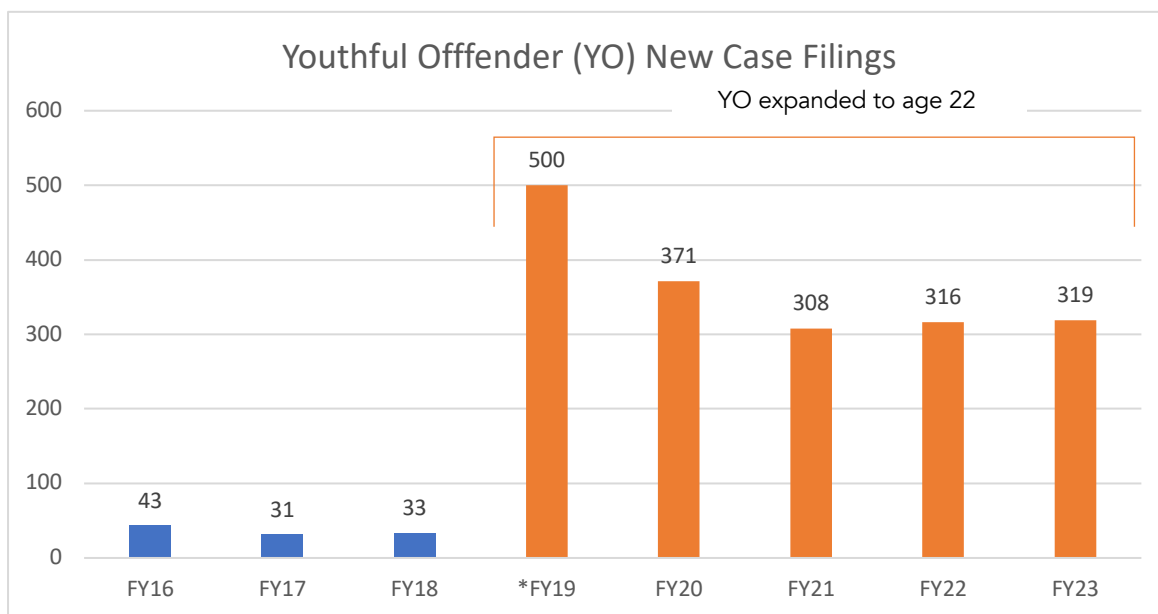
Understanding how RtA is working in Vermont is not only important for other states who are taking steps to follow Vermont's lead (e.g., Massachusetts and Washington, who are considering similar RTA legislation), but it is critically important to Vermont, as the State prepares to incorporate 19-year-olds in the juvenile justice system. This examination of the delinquency caseloads since the implementation of Phase 1 in 2020 (with the inclusion of 18-year-olds), shows that the number of new filings of delinquency cases has remained stable, the number of youths ordered to serve probation or to the custody of DCF have *declined*.

There is not enough information available to determine the specific reasons for this, but reasons could include a reduction in youth crime in Vermont and/or the result of the planning and preparation that was accomplished in anticipation of the implementation of Act 201. Regardless, concerns articulated before implementation that juvenile caseloads would be overwhelmed by Raise the Age have not been borne out.

Vermont has undertaken at least two other significant youth justice changes while planning for Raise the Age:

- (1) The state expanded the "youthful offender" (YO) system: Vermont is one of seven jurisdictions in the country with a hybrid system, which combines elements of the juvenile and adult legal systems, including for youth over the 18<sup>th</sup>

birthday.<sup>7</sup> The upper age limit of Vermont’s youthful offender system increased from the 18<sup>th</sup> to the 22<sup>nd</sup> birthday starting in 2018 and, consequently, the YO caseloads increased. There were 33 new YO case filings in FY18 and 500 in FY19. Since then, the YO caseloads have dropped and stabilized, as seen in the chart below.



Data for FY 16-FY22 from VT Judiciary Annual Statistical Reports found at

<https://www.vermontjudiciary.org/about-vermont-judiciary/court-statistics-and-reports>.

Data for FY23 comes from the VT Office of the Attorney General December 2023 Report to the Legislature On Court Diversion and Pretrial Services.

- (2) In October 2020, Vermont closed its only youth prison, Woodside, after troubling reports of severe harm and trauma being caused to youth. Since its closure, The VT Digger and other outlets have reported the state has had to pay \$4.5 million to settle a lawsuit with youth who were incarcerated,<sup>8</sup> and Seven

<sup>7</sup> The other jurisdictions with hybrid systems are Alabama, the District of Columbia, Florida, Michigan, New York, and South Carolina. For more information about hybrid systems, including an in-depth analysis of Vermont’s youthful offender law, see the Emerging Adult Justice Project’s recent report by Selen Siringil Perker and Lael Chester, *Time for Change: A National Scan and Analysis of Hybrid Justice Systems for Emerging Adults*, which can be found at <https://www.eajustice.org/hybrid-systems>.

<sup>8</sup> A February 15, 2023 article by Alan J. Keays in the VT Digger details the lawsuit brought on behalf of seven youth, “alleging widespread neglect and abuse by employees and supervisors.” The article, *State to pay \$4.5M to settle lawsuit over ‘conscience-shocking’ use of force at Woodside juvenile facility* can be found at <https://vtdigger.org/2023/02/15/state-to-pay-4-5m-to-settle-lawsuit-over-conscience-shocking-use-of-force-at-woodside-juvenile-facility/>.

Days published the story of Grace, and the violence, isolation, and trauma she and others experienced while in the “care” and custody of the state.<sup>9</sup> The atrocities at Woodside went ignored for far too many years and were the result of systemic negligence that enabled abuse to persist. The state has been working on an alternative approach to the “High-End System of Care” but, as of now, it has not yet developed a continuum of services including small, home-like developmentally appropriate placement options for the few youths who cannot be adequately served in the community.

These reforms appear to be taking up considerable attention of key stakeholders. However, as evidenced by discussions and presentations at recent Legislative hearings, these issues are often inappropriately bundled together or confused with Raise the Age. As an example, a DCF report entitled “DCF Raise the Age, High End System of Care Status Update in Accordance with Act 23, Section 14,” which was submitted to the Legislature on December 1, 2023, has a chart showing caseloads, including “DY,” which “describes youth who had pending delinquency matters during the time frame referenced. This data is reflective of youth who have delinquency and youthful offender status.” Delinquency and youthful offender cases involve two different types of caseloads, and only one will change this July, making the data shared in the report tangential for planning for Raise the Age.

Not only is the available data on the implementation of Raise the Age at times confusing, they are limited. Except for the first six months of incorporating 18-year-olds in the juvenile system, there is no caseload data for this age group nor a breakdown of key demographic markers (race, ethnicity, gender, etc.). Vermont would benefit tremendously from an investment in data analysis going forward, as recommended in the 2019 Implementation Plan.<sup>10</sup> However, at the very least, Vermont must share the basic caseload numbers on a regular basis. As noted in the Office of the Child, Youth, and Family Advocate’s recent (and first) annual report, “Raise the Age is not a ‘set it

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<sup>9</sup> Joe Sexton reported on his investigation of Woodside and tells the story of Grace Welch and the abuse she endured in DCF custody, including while incarcerated at Woodside, among other young people. The October 25, 2023 article in Seven Days can be found at <https://www.sevendaysvt.com/news/woodside-investigation-violence-and-isolation-at-vermonts-juvenile-lockup-39222023>.

<sup>10</sup> See Part X of the Report on Act 201 Implementation Plan Report & Recommendations for a detailed and comprehensive list of the data that should be collected and analyzed. The Report can be found at <https://legislature.vermont.gov/assets/Legislative-Reports/20191101-Vermont-RTA-DCF-Report-Final.pdf>

and forget it' law. It requires ongoing support and implementation with an eye towards it benefits."<sup>11</sup>

The good news is that Vermont has already invested in the implementation of Phase 1; the reduction of delinquency caseloads since this implementation has set the stage nicely for Vermont's implementation of Phase 2. Time is of the essence, as Vermonters are depending on the state to follow through and ensure that 19-year-olds receive developmentally appropriate services to support safe and healthy transitions to adulthood.

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<sup>11</sup> Vermont Office of the Child, Youth, and Family Advocate, Annual Report 2023 in Accordance with 33 V.S.A. § 3203 (A)(6). Prepared by Matthew Bernstein & Lauren Higbee.  
<https://legislature.vermont.gov/assets/Legislative-Reports/2023-OCYFA-Report-FINAL.pdf>