



# Department of State's Attorneys and Sheriffs

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*(draft)*

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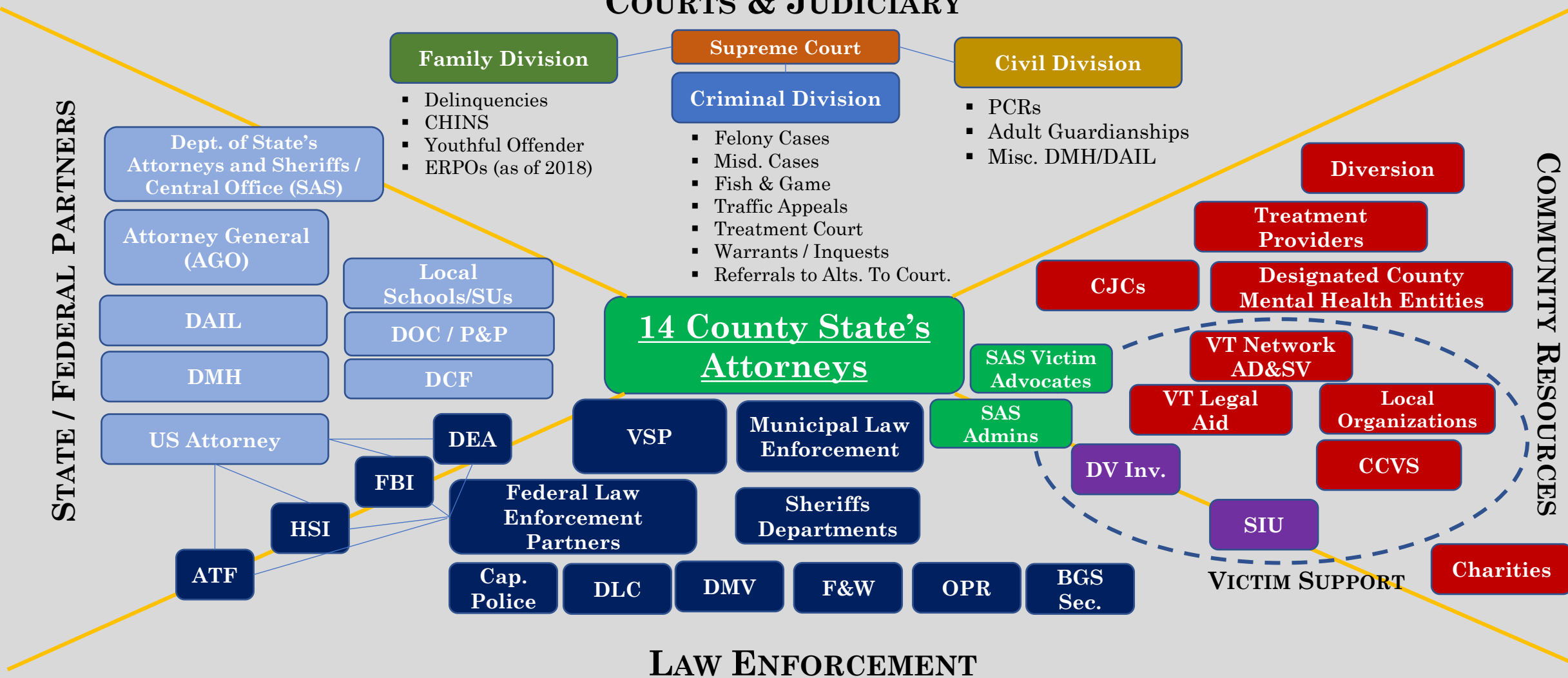


# Organizational Structure and Jurisdiction of State's Attorneys



# ORGANIZATIONAL STRUCTURE AND JURISDICTION

## COURTS & JUDICIARY





- **State's Attorneys** are elected every four years and serve as county prosecutors with jurisdiction for prosecution of adult criminal conduct, associated/related civil matters, juvenile delinquencies, YO, and petitions for “Children in Need Of Care or Supervision” (“CHINS”). In Vermont, the majority of *cases/dockets* are filed by State's Attorneys.
- **State's Attorneys are Constitutional Officers**, within the executive branch, thus, separation of powers doctrine applies.
  - “The Constitution of Vermont provides, Chap. II, Sec. 5, that ‘The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.’ While this section does not mean an absolute separation of functions, and one department may properly be authorized to exercise certain powers which may in some manner pertain to another, these powers must be such as are incidental to the discharge of the functions of the department exercising them, and beyond this the powers of one department may not constitutionally be conferred upon another. *Source: In re Opinion of the Justs.*, 115 Vt. 524, 529, 64 A.2d 169, 172 (1949); *Trybulski v. Bellows Falls Hydro-Elec. Corp.*, 112 Vt. 1, 6-7, 20 A.2d 117, 119-20 (1941); *Source: State v. Pierce*, 163 Vt. 192, 195, 657 A.2d 192, 194–95 (1995).
- **The Attorney General shares concurrent jurisdiction** and the same “authority throughout the State as a State's Attorney.” *Source: 3 V.S.A. § 152.*
- **Note:** Petitions to request to terminate parental rights (“TPR”) may be filed by the State, through the Commissioner of the Department of Children and Families, or the attorney for the child, in accordance with the following. 33 V.S.A. § 5114. In practice, an Assistant Attorney General files TPR petitions.



# ORGANIZATIONAL STRUCTURE AND JURISDICTION

➤ **The Department** of State's Attorneys and Sheriffs (“the Department”), serves as the central supporting office for all fourteen State's Attorneys.

- **The Department provides support in a variety of areas**, including: *training, budgetary management, human resources, policy and legislative affairs, victim advocate coordination, information/media requests and public records, interoffice coordination, special and limited appearances in active cases, coordination and response of statewide issues, grant management, intergovernmental relations, service on boards and committees, appellate matters, ad hoc prosecutorial-related legal support, oversight of the case management system, IT support, as well as other topics that arise.*

➤ **The Department's Central Office is located in Montpelier.**

- **Staff includes:** *the Executive Director (John Campbell), the Labor Relations and Operations Manager (Annie Noonan), the Legislative and Assistant Appellate Attorney (Tim Lueders-Dumont), an Appellate Attorney (Evan Meenan), and a Victim Advocate Program Coordinator (Sarah Roberts), amongst other staff that support prosecutors statewide. The Department was created pursuant to 24 V.S.A. § 367.*
- **Note that the Department provides certain types of support to elected Sheriffs and Transport Deputies (benefits and salary are coordinated through the central office but Sheriff law enforcement operations are independent of the Department).** *The Department of SAS, under 24 V.S.A. § 367, provides the administrative and budgetary oversight and structure for the Sheriffs for the transportation and extradition work. The State General Fund pays for 14 Sheriffs, 20 Transport Deputies, 1 Transport Coordinator, and 1 Executive Staff Assistant. Sheriffs provide professional law enforcement services, including transport of prisoners, mentally ill persons, and juveniles who are in the custody of the State of Vermont.*





## VERY BRIEF OVERVIEW OF VERMONT COURTS WHERE STATE'S ATTORNEYS PRACTICE

*(Source Judiciary Website)*

- **The Criminal Division** of the Vermont Superior Court has jurisdiction over all criminal cases and certain civil cases, most of which are ancillary to criminal prosecutions (license suspension hearings etc.) The Criminal Division also holds hearings on restitution and extradition matters. In the Criminal Division of the Superior Court the Vermont rules of Criminal Procedure will be applied.
  - *Prior to the 2010 restructuring, the Criminal Division of the Superior Court was known as the District Court. The Criminal Division also hears appeals of final decisions of the Judicial Bureau. Each County is referred to as a "unit." In practice, "Vermont Superior Court, Criminal Division, Washington County Unit."*
- **The Family Division** has original jurisdiction over a host of mostly family and youth related law, including juvenile proceedings; cases that started in the Criminal Division but upon transfer/or direct filing of a youthful offender petition (requesting that a defendant under 22 years of age in a criminal proceeding who had attained 12 years of age but not 22 years of age at the time the offense is alleged to have been committed be treated as a youthful offender); ERPOs; abuse prevention proceedings; and, several other protective service issues.
  - *Prior to the 2010 the Family Division of the Superior Court was known as the Family Court.*
- **State's Attorneys and their Deputies, and the appellate attorney for the Department, also appear before the Vermont Supreme Court on appeals** stemming from decisions made by lower courts.

**Note: The Judicial Bureau** has jurisdiction over traffic violations, civil ordinance violations, minor fish and wildlife violations, violations of the laws concerning tobacco, littering, burning of solid waste/illegal dumping, hazing, unauthorized disclosure of criminal records, various violations of the laws pertaining to alcohol, amongst other areas of the law.

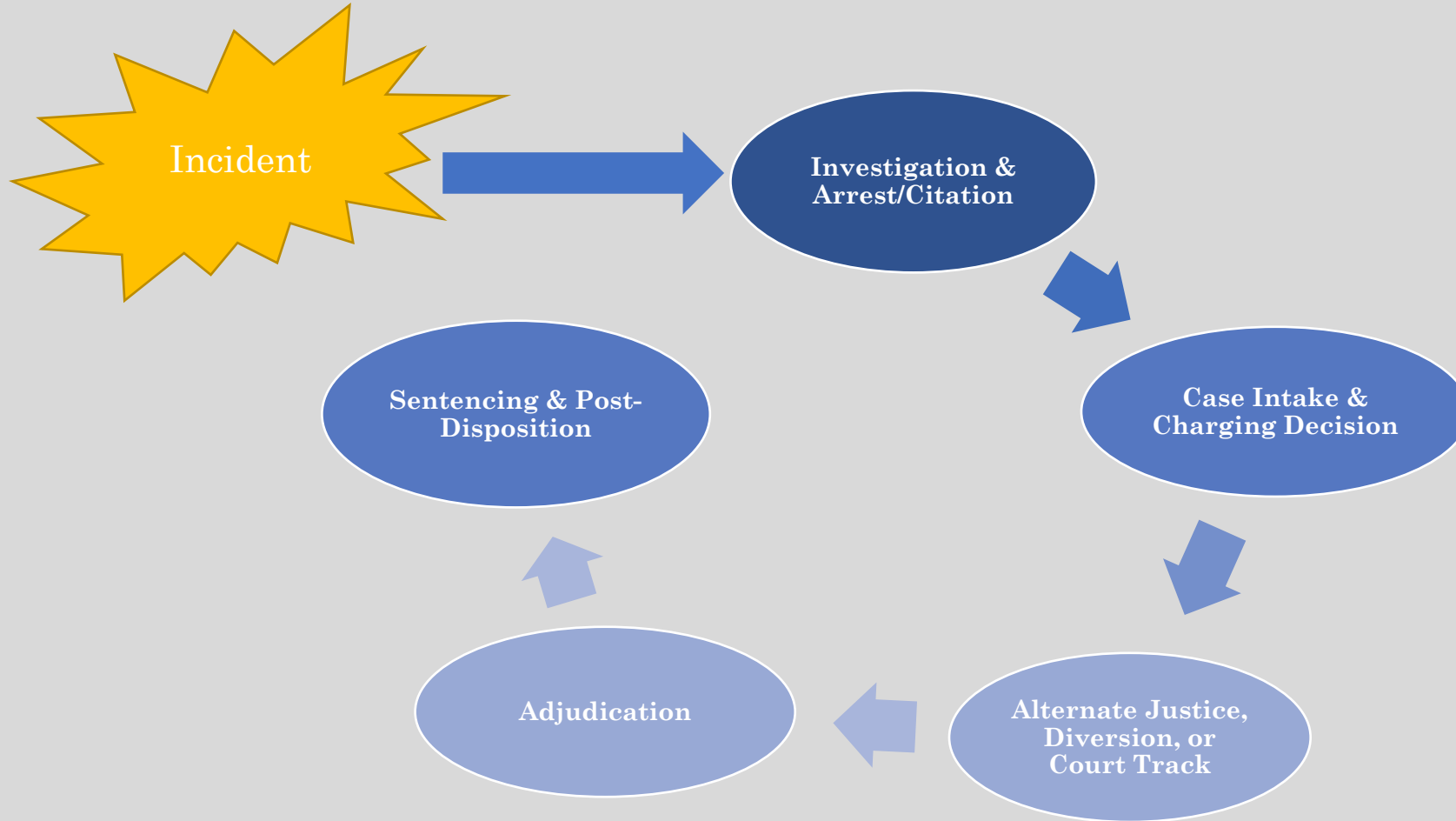


# Criminal Justice Process

- The Vermont Rules of Criminal Procedure apply and govern procedure in the Criminal Division of the Superior Court in all criminal proceedings.
- Rule 2 provides that: “these rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.”



# CRIMINAL JUSTICE PROCESS



## A Dynamic Process:

Prosecutors are one of the few stakeholders with a role to play in each stage of case progression.

Investigations are law enforcement led, with advice and assistance from State's Attorneys

The remainder of the process involves community partners, the court system, public defenders, and in some cases the Department of Corrections.





## *Incident*

*(Potential criminal activity reported to law enforcement / first contact with law enforcement)*

- Law Enforcement Officer (“LEO”) call for service, contact, or observation of incident
  - V.R.Cr.P. 3 creates three categories of potential crimes from an incident: (1) felonies, (2) misdemeanors committed in the presence of LEO, and (3) other misdemeanors
- Incident that results in the commencement of law enforcement response is termed an *investigation*
- Incidents may be observed by LEO (e.g. bad driving) or reported by civilians (e.g. burglary)

- NOTE: incidents that commence a law enforcement investigation occur at all times of day and night; some require on-call State’s Attorney for a variety of reasons:
  - Legal advice to law enforcement/response to questions
  - Alternatives to arrest/citation (e.g. direct referral to CJC)
  - Assistance with locating court orders
  - Contact with judicial officers to set conditions, bail, or to obtain search warrants
  - Addressing “untimely” or “unattended” deaths



## Investigation

- LEOs work to gather evidence after incident to determine if a crime may have occurred (*probable cause*) – sometimes upon the advice or conference of a prosecutor
  - Scene photos/collection of any physical evidence
  - Taking of statements from victims/witnesses
  - Collection of medical records, electronic records, 911 calls
- Direct contact may be made with subject/suspect of potential criminal incident
- An investigation may take minutes, hours, days, weeks/months, or longer

- NOTE: 5<sup>th</sup> Amendment protections apply, including privilege against self-incrimination. Statements obtained as a result of a custodial interrogation may not be used against defendants unless they are informed of their *Miranda* rights. Custodial = substantial seizure, formal arrest or restraint of freedom equivalent to arrest. Mere questioning at police station is not automatically “custodial.”



## Arrest or Citation?

Rule 3 of the Vermont Rules of Criminal Procedure prescribes how criminal conduct is responded to:

- **Rule 3 (a) “Arrest Without a Warrant for a Felony Offense.”**
  - LEO may arrest without a warrant (or may issue a citation) when probable cause to believe a felony has been committed
  
- **Rule 3 (b) “Arrest Without a Warrant for a Misdemeanor Offense Committed in the Presence of an Officer.”**
  - LEO may arrest without a warrant (or may issue a citation) when probable cause to believe a misdemeanor has been committed in their presence
  
- **Rule 3 (c) “Nonwitnessed Misdemeanor Offenses.”**
  - LEO will generally issue a citation to appear before a judicial officer in lieu of arrest or officer may arrest without a warrant if the officer has probable cause as to several factors.

- **NOTE:** Exceptions exist, for example – a non-witnessed domestic assault may result in an arrest or issuance of a citation. V.R.Cr.P. 3 details these offenses.



## Arrest or Citation?

**“Probable Cause:”** PC means that a reasonable person with available evidence would say the person probably committed the offense. “Probable Cause” is a fluid concept that is not readily reduced to a strict rule, but it may be viewed as a *substantial chance* of criminal activity.

### **In Practice:**

- Suspect of crime may be lodged, subject to bail or held without (13 V.S.A. § 7553 or 7553a) until the next day of business and then brought before a judicial officer. *If the suspect is subject to bail the person may be released if bail is posted.*
- Suspect may also be issued a citation for the future to appear or taken into custody and then released and issued a “citation”
- The accused may also be “cited” or arrested and then “cited” in for the next day but not held – this is called a “**flash cited**” (a law enforcement command to appear at court that day or the following day)
- Failure to appear on a citation may result in judicial summons/bench warrant with bail/re-cite and release
- **Overnight/After Hours:** LEO contacts on-call State’s Attorney/Deputy for approval of bail request and conditions; LEO contacts judicial officer and seeks conditions of release and/or bail; within 48 hours a judge must make a PC determination.



## *Charging Decisions*

- “We are all equally subject to the same legislatively conferred ***prosecutorial discretion*** to proceed . . . as the circumstances may seem to justify in a given case.... **Prosecutorial discretion** in charging decisions is no stranger to our law, and is entirely consistent with our Constitution....”  
Source: *State v. Rooney*, 2011 VT 14, ¶ 28 (internal citation omitted).
- State's Attorneys and their deputies have the discretion/authority to charge someone with a crime or not charge someone with a crime. This discretion is true even when a victim does not wish for a prosecution to continue. This discretion is true even when a prosecutor chooses not to proceed with prosecution even when there is evidence and a victim would like the prosecution to proceed.
- Only a Judge or State's Attorney (or deputy) may dismiss the charge after it is filed.

*Prosecutorial Discretion is Foundational to the Criminal Justice System*



## *Charging Decision: Process / Practice*

- **LEO Case Referral:** PC affidavit, record checks, etc. are sent to State's Attorney for review
- **Prosecutor's Options:** (1) decline charges; (2) hold/return for further investigation; (3) bring charges and file "criminal information" with the court (creates a docket); (4) refer to diversion program (may occur pre or post-arraignment); (5) refer the matter to CJC or other community programming (may occur pre or post-arraignment); or (6) utilize other alternative pathways/agreements to resolve the matter
- **Charging document - "criminal information:"** Statement filed by prosecutor, on their oath of office, providing notice of the charge, charge code, and penalties. In practice, information is submitted with State's requested conditions, witness list, initial discovery/PC affidavit, and essential materials for court and defense. Cases almost always filed by criminal information, versus use of grand jury.
- **Off-Ramps/Alts.to Justice Pathways:** Treatment Court/Diversion/CJCs/Other Programming ("prosecutorial discretion" is key)



## Initial “off-ramps” - Restorative Justice, CJsCs, and Diversion

**Restorative justice** is a problem-solving approach where the victim, the alleged offender and the community engage with the consequences of an incident/offense. Success is measured “not by how much punishment is given, but by how much harm has been repaired or prevented. Restorative justice offers a multitude of benefits, from the empowerment of individuals to cost savings for communities.” (Source): *Benefits of Community Justice in Vermont | Offenders Victims Community | Restorative Justice (cjvnt.org)*

***At present, there have never been as many ways to address criminal conduct outside of the traditional criminal justice system.***

**County Diversion Programming.** Vermont has emphasized the use of court diversion programs, including the “Tamarack” program to resolve criminal cases without adjudication or conviction. County Court Diversion programs receive cases on a referral from the State and are voluntary alternative to the formal court process for certain youth and adult offenders. Some of the goals of Diversion are to see that victims have input into a participant's steps to repair the harm (sometimes in a contract) and receive appropriate restitution / response for their losses. After programming is successfully completed, the case may be dismissed by the State.

**Community Justice Centers.** In 2007, Vermont provided a statutory framework for community justice centers (“CJsCs”) to resolve disputes and address the wrongdoings of individuals who have committed “municipal, juvenile, or criminal offenses.” Pursuant to 24 V.S.A. § 1964(a)(3) the CJsCs “shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote the rehabilitation of youthful and adult offenders.”

- *Certain Cases that may not be Referred to a Community Justice Center.* Pursuant to 24 V.S.A. § 1967 “[n]o case involving domestic violence, sexual violence, sexual assault, or stalking shall be referred to a community justice center except in Department of Corrections offender reentry programs pursuant to protocols protecting victims.”

**In practice:** a set of choices are available to divert a case from the trial track, ranging from CJC referrals, either pre-charge or post-charge/post-arraignment, diversion referrals, “Tamarack” referrals, and even in the midst of traditional criminal court track, there may a Treatment Court option or other alternative pathways.



## Arraignment

- Immediately before arraignment the *Judge must find “probable cause”/PC* for the filed “information” for each charge/count within an information (e.g., for a two-count information PC must be found as to each count) and if there is no PC, that count is dismissed
- *If a referral has been filed* with the case by the State to the Diversion Program or a CJC the defendant may accept the referral, in most cases the acceptance occurs “pre-arraignment but post-filing/docket,” but may occur pre-filing, and in some cases, acceptance occurs post-arraignment / if diversion or CJC is successful docket will eventually be dismissed (referrals to restorative justice may occur at any time)
- If no Diversion or CJC referral:
  - Defendant *must receive the information and supporting paperwork* (affidavits of PC/information)
  - Defendant *may apply for public defender / Defendant must be advised of rights*
  - Defendant *enters plea or is allowed 24 hours before making plea decision* (guilty; no contest; not guilty)
- If plea is guilty / no contest, next step will be sentencing unless it is a felony where it requires presentence investigation (“PSI”)
- If not guilty, Judge may “release on their own recognizance” or will issue “conditions of release” to allow defendant to remain in the community and/or bail unless person cannot make bail or are subject to a HWB while case is pending (if initial incident occurred overnight temporary conditions may already be in place at time of arraignment)
  - *NOTE: 13 V.S.A. § 7554(a)(1) is an analysis for risk of flight (bail/conditions); 13 V.S.A. § 7554(a)(2) is the analysis for protecting the public (conditions).*
- Victim may attend arraignment and will be notified of outcome of hearing if not in attendance





## Competency Issues

- At arraignment, any party, including the Judge, may raise a question as to the defendant's competency ("to stand trial")
- Competency is a plain review of the current situation and asks: does the defendant reasonably understand the charges/gravity of situation/proceedings/the capacity or ability to actually work with defense counsel
- If competency is at issue, which should be ID-ed early-on, the Judge may order a competency eval by a psychiatrist / DMH
- If someone is deemed incompetent the defendant may not stand trial / competency is fluid and may be restored / resume
  - If, after an eval, the court finds that the defendant is not competent the court will schedule a hospitalization hearing to determine the appropriate, yet "least restrictive environment" for treatment / and court may issue an order either of hospitalization or non hospitalization – with DMH oversight as to conditions
- The criminal case will be on hold for as long as the defendant is not competent but may resume when/if competency resumes



## *Discovery / Pre-Trial / Motion Practice*

- **Discovery** is when the defendant/defense counsel receive evidence/documents and take the time to “discover” more about the State’s case/evidence against the defendant
  - State must provide a witness list and all documents/information as to evidence in the State’s possession, with certain protections for victims
  - In felony cases, defense is likely to engage in depositions of State’s witnesses / in misdemeanors depositions may only take place by agreement of the State/defense or court order
  - **Misdemeanor = 2 years or less**
  - **Felony = 2 years and more**
- **Motions / Hearings**
  - The defense may file motions in defense of client to keep out certain evidence (“Motions to Suppress” illegally obtained statements/evidence)
  - “Motions to Dismiss” case may be filed by the defense if it is alleged that the State’s case is lacking sufficient evidence to support charge, or in the interests of justice
  - There may be hearings to review bail / conditions of release
  - Motions concerning evidence sought to be introduced or kept out at trial – “Motions in Limine”
  - If a hold without bail was imposed – “Weight of Evidence” hearing and strict timelines



## *Status Conferences, Plea Discussions*

- After arraignment cases are brought back before a judge for *Status Conference* / sometimes multiple after arraignment
- *Status Conferences are the “check-in”* with the Judge that require the parties to stay engaged with the case and are often a chance to have the parties update the court as to any discovery or motion practice and discuss and weigh the merits of a potential change resolution = a plea agreement or other alternative to trial
- Victim will be notified of any hearing in adult criminal court: status conferences/hearing dates with a right to attend and be advised of hearing outcome
- Throughout the process the parties engage in potential ways to resolve the case by plea agreement / Victims are apprised and kept in the loop for input concerning plea agreements
- If the State and defense agree to a plea agreement, they may notify the court and ask for change of plea hearing (“COP”) (for misdemeanors – sentencing will take place at the COP for felonies the sentencing will take place some time after the COP
- NOTE: alternatives to justice = CJC, Diversion, Treatment Court, Dismissal with contingencies, always remain available throughout the process
- If case does not settle, then it will be set for trial/jury selection and potential motions may be heard



## *Jury Draw*

- The State and defense will question potential jurors, who are people that live in the county where the trial is to take place
- The goal is to select twelve people to sit as jurors with two alternates
- The State and defense ask questions to determine a “fair and impartial” jury of peers who will sit to decide case
- Themes are often discussed: presumption of innocence / beyond a reasonable doubt / direct and circumstantial evidence
- Victims are typically not present at jury selection / defendant must be present



## *Trial Process*

- ***Opening Statements by State then Defense***
- ***State must prove case “beyond a reasonable doubt” which is the highest standard***
  - State presents its case and evidence against defendant with Direct Examination of State’s witnesses / Defense will have Cross Examination of State’s Witnesses
- ***Defense goes next and may call witnesses but is not required to do so***
  - Direct examination by defense / cross examination by State / State may rebut/respond to defense’s case if needed
- Throughout trial bench-bar conferences may occur to settle objections and evidentiary disputes outside the hearing of the jury (Attorneys object to evidence at trial which is then contained in the record so that a future appeal might be based on objections that were decided not in favor of the moving party)
- ***Closing Arguments*** are delivered by the State and then the Defense, State may then respond in rebuttal
- ***Jury is read Jury Instructions*** by the Judge / “the law”
- ***Jury Deliberates*** and the decision must be unanimous = Jury verdict: guilty/not guilty/hung-mistrial (unable to agree)
  - If not guilty verdict, defendant is free but not guilty mis-trial/hung jury does not mean innocent under the law
  - If guilty – case set for sentencing



## Sentencing

- If a guilty verdict at trial, or a defendant voluntarily changed their plea to guilty or NOLO after reaching plea agreement, court will sentence defendant
- Victim has right to be present and heard regarding sentencing (victim impact)
- If a plea agreement has been reached, the Judge may choose to accept the agreement and impose the sentence under the agreement or the Judge may reject the agreement, whereby defendant will withdraw plea of guilty and trial-track may resume or new agreement
- If a guilty verdict occurs at trial, the Judge may impose a sentence pursuant to what is allowed by statute and pursuant to the goals of sentencing
- Every offense has a range of penalties (fine/term of incarceration)
- Sentencing may include = incarceration; probation (suspended jail sentence in community); a monetary fine; amongst other options
- And the Judge in felony cases will order PSI for the Department of Corrections to complete which will assist the Judge in determining a sentence for that specific person / circumstances.



## Vermont Treatment Courts:

- Treatment Courts are one of the potential off-ramps to the typical criminal justice process. Treatment Courts are specialty courts which aim to assist those who come to interact with the criminal justice system, and stand accused of criminal conduct, who are experiencing substance-use-related dependency. Treatment Courts represent an alternative way for those with high-risk needs to receive fair and just treatment while interacting with the criminal justice system.
- A person accused of a crime may be referred and screened for Treatment Court / During the course of the participant's treatment court tenure the criminal docket will remain active.
- Participants must follow program rules and a show up for treatment / court hearings while a Treatment Team monitors participant progress. The Treatment Team is composed of: Judge, Prosecutor, Defense, Coordinator, Treatment Service Providers, Law Enforcement, and Department of Corrections.
- Upon completion of the phases of Treatment Court the participant may graduate and in exchange receive a more favorable outcome including, in some instances a dismissal or deferred sentence. Harm reduction, honesty, and accountability are at the heart of specialty courts.

### Where are the Vermont Treatment Courts?

- Chittenden Adult Drug Treatment Court and Adult Mental Health Treatment Docket (And Family Treatment Court Docket)
- Rutland Adult Drug Treatment Court Docket
- Washington Adult Drug Treatment Court Docket
- Windsor DUI Treatment Court Docket (Southeast Regional DUI Treatment Docket)

### Basic Treatment Court Model:

- *Offender screening and assessment of risk and need*
- *Judicial interaction*
- *Monitoring (e.g. substance use testing) and supervision*
- *Graduated sanctions and incentives*
- *Treatment and rehabilitation services*



## *Post-trial / Appeals / Post-Conviction Relief (“PCRs”)*

- **Sentence Reconsideration.** 13 VSA § 7042 (Sentence Review) provides that any court imposing a sentence, within 90 days of the imposition of that sentence, or within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction, may upon its own initiative or motion of the defendant, reduce the sentence.
- **Supreme Court Appeal.** A person convicted by jury has a **Right to Appeal to Vermont Supreme Court** to overturn conviction
  - If Vermont Supreme Court affirms the conviction
  - If case reversed by the Vermont Supreme Court, likely to be set for a new trial
- **PCR.** *If Vermont Supreme Court upholds a conviction, the convicted person may file a PCR* with the Civil Division in the County Superior Court where the sentence was imposed to review case for error / possible constitutional violations (IAC of a Defense Attorney) / PCRs may be filed in cases stemming from plea agreements, bench trials, and jury trials
  - In a PCR, voluntary agreements may occur for release or probation conditions etc.
  - The Civil Division may overturn the criminal conviction, but the case may be refiled by the State
  - In PCRs that strike a criminal conviction, the remedy might not be that the State must refile – it could just be that the case automatically resumes at the point just prior to the error.

**Note:** Vermont also has habeas corpus law and there is also federal habeas proceedings – both provide additional avenues for seeking redress from a conviction. Meaning, that there are at least 5 ways to revisit a sentence / conviction not including pretrial opportunities to avoid a conviction in the first place, e.g., Treatment Court, Diversion, CJs, etc.





## *Relevant Statutory Guidance Followed by Prosecutors*

- Pretrial Services/Diversion: 3 V.S.A. § 164(b)(1)-(2) & (e)(1)
- Bail/Conditions of Release: 13 V.S.A. § 7554
- Pretrial Discovery: V.R.Cr.P. 15, 16, & 16.22
- Sentencing Alternatives: 13 V.S.A. § 7030
- Collateral Consequences: 13 V.S.A. § 8005
- Community Justice Centers: 24 V.S.A. ch. 58
- “Listed Crimes”: 13 V.S.A. § 5301(7)
- “Big 12” Crimes: 33 V.S.A. § 5204
- [Vermont Model Criminal Jury Instructions \(vtjuryinstructions.org\)](http://vtjuryinstructions.org)

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