To: Corrections Oversight Committee

From: Amy M. Davenport, Administrative Judge, and Patricia Gabel, Court Administrator

Date: October 15, 2014

Re: Report on Statewide Plan for Phased Rollout of Sec. 2, Act 195, and Additional Updates Regarding Implementation of the Legislation

---

1. Proposed Plan for Phased Rollout of Section 2 of Act 195

Pursuant to Section 2 of Act 195, 13 V.S.A. §7554c(b), an individual charged with a criminal offense will be offered the opportunity to engage in a risk assessment and needs screening prior to arraignment beginning January 1. The legislation provides for a roll out over the course of a month period. The rollout involves four phases based on the most serious offense charged as prescribed in §7554c(b). The Judiciary has developed the following plan in consultation with the Commissioner of Corrections and the Agency of Human Services.

A. Phase One: Persons charged with a non-listed felony who are cited into court

The first group to be offered a pre-arraignment risk assessment and needs screening are defendants charged with a non-listed felony who are cited into court. Non-listed felony charges likely to be cited into court (as opposed to resulting in an arrest) include offenses such as theft, fraud, unlawful mischief, some drug charges, burglary, and DUI – 3rd offense. We do not expect this to be a large group – perhaps 50 +/- defendants per month statewide. Prior to the implementation of Phase One, the coordinator for pre-trial services will identify one or more locations in each county where defendants can obtain a screening/assessment and ensure that the individuals administering these tools are identified and trained. The small number of defendants in this first phase will give us the opportunity during this phase of the rollout to implement procedures on the community level for (a) the verbal and written notification by law enforcement at the time of citation regarding the screening and assessment options; (b) the process for obtaining a screening and assessment in the community; (c) the process for the results to be communicated to the State's Attorney; (d) the process for the State's Attorney to communicate the results to the Court and Defense Counsel; and (e) how the procedure will work if the defendant opts not to get a screening/assessment and the screening/assessment is ordered at arraignment. These issues and more will be addressed in the work group that the new Coordinator has assembled.

Estimated time for Phase One: Two months

B. Phase Two: Persons charged with a non-listed offense who are identified as having a substantial substance abuse or MH issue

The second phase of the roll out includes persons charged with a non-listed offense (felony or misdemeanor) who are identified as having a substantial substance abuse or mental health issue. This is potentially a much larger group as it includes both non-listed felonies and misdemeanors and includes persons who are cited into court and persons who are arrested. While the statute provides that the identification of the substance abuse or mental health issues can be done by law enforcement, prosecutors, defense attorneys, probation and parole personnel, a treatment provider, or a family member or friend, it is likely that for pre-arraignment purposes the identification will most likely come from law enforcement or, in the case of probation violations, probation officers. It is very hard to predict how large this group will be, but the addition of misdemeanors and persons charged with non-listed felonies who are arrested could add as many as 300 – 400[1] defendants per month who need to be offered the option of a screening/assessment. Guidance from the Coordinator's work group as to indicators of a substantial substance abuse or mental health issue, would be most helpful.

The results from Phase One of the program will help to predict how many defendants will actually take advantage of the option pre-arraignment. Because the second phase includes defendants who are arrested and may be held on bail until arraignment, we will need to have process and procedures in place for screening/assessments at correctional facilities.

Estimated time for Phase Two: Four Months (running total 6 months)

C. Phase Three: Misdemeanor and Felony Drug Offenses (Excluding Trafficking) Cited into Court

Since drug offenses are considered non-violent offenses and not part of the listed offenses, most of the phase three offenders will probably already have been captured in Phase One or Phase Two. There may be some additional offenders charged with a drug misdemeanor who were not included in Phase 2 because they did not appear to have a substantial substance abuse or mental health issue.

Estimated time for Phase Three: One month (running total 7 months)

D. Phase Four: Detainees Arrested, Lodged and Unable to Post Bail within 24 Hours

This last phase will add offenders charged with violent offenses who are unable to post bail as well as non-violent offenders who are detained. This includes a broad range of felonies and some misdemeanors. Misdemeanors in this category that have not already been covered include first time domestic assault, violation of an abuse prevention order, elderly abuse, child abuse, DUI2, violation of condition of release, stalking, simple assault, reckless endangerment, assault on a police officer.[2] Felonies include the complete range of felony offenses. Numbers

[1] This assumes around 50% of the defendants are identified as having a substantial substance abuse or mental health issue.

[2] For a complete list of misdemeanors which can lead to an arrest even if the crime is committed outside the presence of a police officer, see V.R.Cr.P. 3(c).

are hard to predict, but for those defendants who opt to have a screening/assessment prior to arraignment, the screening/assessment will be done in the correctional facility according to procedures established in Phase 2.

It should be noted that a person who is arrested and posts bail before arraignment becomes a person who is cited into court, i.e. they are given a date to appear in court for arraignment before they are released from the correctional facility. In most cases, there will be a very short window (0-2 days) between release and the arraignment hearing. It may make sense to offer the screenings to these defendants while they are still in the facility. Otherwise, in most cases, the opportunity to participate in a screening will have to be offered at arraignment with the potential consequence that the defendant will have to return to court once the results are in.

Estimated Time to Roll Out Phase 4: 3 months (running total 10 months)

2. Other Updates Related to Act 195 Implementation

a. Training for the Judiciary on Risk Assessment Tool Selected by DOC
A training for judges on the ORAS risk assessment as well as a training on the needs screening tool and clinical assessments is scheduled for December 5th. Prosecutors have scheduled a training on the risk assessment tool on the same day and will use the same presenter although the trainings will occur separately.
b. The Statewide Coordinator, Annie Ramniceanu, was hired and started on 9/22. Annie has held multiple strategy meeting with the Judiciary, Director of the States Attorney's Association, the Defender General, the Health Department, and the Crime Research Group of VT (Karen Gennette and Max Schleuter)
c. The RFP was posted on September 10. The bidders conference was held on 9/24 and answers posted on 9/29. Bids will close on 10/15 and are opened and recorded on 10/16. Review begins on 10/20.
d. A work flow group will begin meeting next week to do a walk-through of pretrial services and tasks that need to be completed in order to be ready to implement on January 1.
e. Annie Ramniceanu is developing an evaluation team and will be working with Crime Research Group (CRG) to develop a design for the evaluation. Annie has met with Karen Gennette, the new executive director of CRG (formerly VCJR) to begin the planning for this process.
f. Annie is exploring an IT interface between a client management system and a potential evaluation database.