

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 295 entitled
3 “An act relating to pretrial services, risk assessments, and criminal justice
4 programs” respectfully reports that it has considered the same and recommends
5 that the House propose to the Senate that the bill be amended by striking out all
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. LEGISLATIVE FINDINGS

8 (a) It is the intent of the General Assembly that law enforcement officials
9 and criminal justice professionals develop and maintain programs at every
10 stage of the criminal justice system to provide alternatives to a traditional
11 punitive criminal justice response for people who, consistent with public
12 safety, can effectively and justly benefit from those alternative responses.
13 These programs shall be reflective of the goals and principles of restorative
14 justice pursuant to 28 V.S.A. § 2a. Commonly referred to as the sequential
15 intercept model, this approach was designed to identify five points within the
16 criminal justice system where innovative approaches to offenders and
17 offending behavior could be taken to divert individuals away from a traditional
18 criminal justice response to crime. These intercept points begin in the
19 community with law enforcement interaction with citizens, proceed through
20 arrest, the judicial process, and sentencing, and conclude with release back into
21 communities. Alternative justice programs may include the employment of

1 police-social workers, community-based restorative justice programs,
2 community-based dispute resolution, precharge programs, pretrial services and
3 case management, recovery support, DUI and other drug treatment courts,
4 suspended fine programs, and offender reentry programs.

5 (b) Research shows the risk-need-responsivity model approach to
6 addressing criminal conduct is successful at reducing recidivism. The model’s
7 premise is that the risk and needs of a person charged with or convicted of a
8 criminal offense should determine the strategies appropriate for addressing the
9 person’s criminogenic factors.

10 (c) Some studies show that incarceration of low-risk offenders or
11 placement of those offenders in programs or supervision designed for high-risk
12 offenders may increase the likelihood of recidivism.

13 (d) The General Assembly recommends use of evidence-based risk
14 assessments and needs screening tools for eligible offenses to provide
15 information to the Court for the purpose of determining bail and appropriate
16 conditions of release and informing decisions by the State’s Attorney and the
17 Court related to a person’s participation and level of supervision in an
18 alternative justice program.

19 (e) As used in this act:

20 (1) “Clinical assessment” means a detailed and formalized review of a
21 person’s strengths, expressed and identified needs, and social determinants of

1 health that lead to the development of an individual plan of care or treatment
2 plan, including referral to community providers and resources.

3 (2) “Needs screening” means a triage function that determines primary
4 and secondary needs and whether there are indicators that a full clinical
5 assessment is warranted. The screening leads to a determination of the
6 appropriate referral to community resources or may lead to no further
7 intervention.

8 (3) “Risk assessment” means a pretrial assessment that is predictive of a
9 person’s failure to appear in court and risk of violating pretrial conditions of
10 release with a new alleged offense.

11 (f) The General Assembly intends this act to be a continuation of justice
12 reinvestment efforts initiated in 2007 by the Legislative, Judicial, and
13 Executive Branches. Justice reinvestment is a data-driven approach to improve
14 public safety, reduce corrections and related criminal justice spending, and
15 reinvest savings in strategies that can decrease crime and strengthen
16 communities.

17 (g) Buprenorphine/Naloxone (Suboxone or Subutex) is a well-known
18 medication used in the treatment of opioid addiction. Vermont spends
19 \$8.3 million in Medicaid funds annually on these drugs. As medicated-assisted
20 treatment for opiate addiction has increased substantially in the last several
21 years, so has illegal diversion of these drugs and their misuse. Suboxone is

1 currently the number one drug smuggled into Vermont correctional facilities
2 and evidence suggests that the nonmedical use of such drugs is gaining in
3 popularity. The General Assembly urges the administration to prioritize efforts
4 to ensure that people with opiate addictions are provided access to necessary
5 medication, while taking all possible measures to prevent the diversion and
6 misuse of these drugs, including working with drug manufacturers.

7 Sec. 2. 13 V.S.A. § 7554c is added to read:

8 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

9 (a)(1) The objective of a pretrial risk assessment is to provide information
10 to the Court for the purpose of determining whether a person presents a risk of
11 nonappearance or a threat to public safety, so the Court can make an
12 appropriate order concerning bail and conditions of pretrial release.

13 (2) The objective of a pretrial needs screening is to obtain a preliminary
14 indication of whether a person has a substantial substance abuse or mental
15 health issue that would warrant a subsequent court order for a more detailed
16 clinical assessment.

17 (3) Participation in a risk assessment or needs screening pursuant to this
18 section does not create any entitlement for the assessed or screened person.

19 (b)(1) A person whose offense or status falls into any of the following
20 categories shall be offered a risk assessment and, if deemed appropriate by the
21 pretrial monitor, a needs screening prior to arraignment:

1 (A) misdemeanor drug offenses cited into court;

2 (B) felony drug offenses cited into court;

3 (C) felonies that are not listed crimes cited into court;

4 (D) persons who are arrested and lodged and unable to post bail
5 within 24 hours of lodging, excluding persons who are charged with an offense
6 for which registration as a sex offender is required upon conviction pursuant to
7 subchapter 3 of chapter 167 of this title or an offense punishable by up to life
8 imprisonment; and

9 (E) persons not charged with a listed crime who are identified by law
10 enforcement, the prosecution, the defense, probation and parole, the Court, a
11 treatment provider, or a family member or friend as having a substantial
12 substance abuse or mental health issue.

13 (2) Participation in an assessment or screening shall be voluntary.

14 (3) In the event an assessment or screening cannot be obtained prior to
15 arraignment, the Court shall direct the assessment and screening to be
16 conducted as soon as practicable.

17 (4) A person who qualifies pursuant to subdivision (1)(A)–(E) of this
18 subsection and who has an additional pending charge or a violation of
19 probation shall not be excluded from being offered a risk assessment or needs
20 screening unless the other charge is a listed crime as defined in section 5301 of
21 this title.

1 (5) Nothing in this section shall be construed to limit the Court's
2 authority to order an assessment or screening as a condition of release under
3 section 7554 of this title.

4 (6) The Administrative Judge and Court Administrator, in consultation
5 with the Secretary of Human Services and the Commissioner of Corrections,
6 shall develop a statewide plan for the phased, consistent rollout of the
7 categories identified in subdivisions (1)(A) through (E) of this subsection. All
8 persons whose offense or status falls into one of the categories shall be eligible
9 for a risk assessment or needs screening on or before January 1, 2016. Prior to
10 that date, a person shall not be guaranteed the offer of a risk assessment or
11 needs screening solely because the person's offense or status falls into one of
12 the categories. Criminal justice professionals charged with implementation
13 shall adhere to the plan.

14 (c) The results of the assessment and screening shall be provided to the
15 prosecutor who, upon filing a criminal charge against the person, shall provide
16 the results to the person and his or her attorney and the Court.

17 (d)(1) In consideration of the assessment and screening, the Court may
18 order the person to comply with any of the following conditions:

19 (A) meet with a **pretrial** monitor on a schedule set by the Court;

20 (B) participate in a clinical assessment by a substance abuse
21 treatment provider;

1 (C) comply with any level of treatment or recovery support
2 recommended by the provider;

3 (D) provide confirmation to the pretrial monitor of the person's
4 attendance and participation in the clinical assessment and any recommended
5 treatment; and

6 (E) provide confirmation to the pretrial monitor of the person's
7 compliance with any other condition of release.

8 (2) If possible, the Court shall set the date and time for the assessment at
9 arraignment. In the alternative, the pretrial monitor shall coordinate the date,
10 time, and location of the clinical assessment and advise the Court, the person
11 and his or her attorney, and the prosecutor.

12 (3) The conditions authorized in subdivision (1) of this subsection shall
13 be in addition to any other conditions of release permitted by law and shall not
14 limit the Court in any way.

15 (e)(1) Information obtained from the person during the risk assessment or
16 needs screening shall be exempt from public inspection and copying under the
17 Public Records Act and, except as provided in subdivision (2) of this
18 subsection, only may be used for determining bail, conditions of release, and
19 appropriate programming for the person in the pending case. The immunity
20 provisions of this subsection apply only to the use and derivative use of

1 information gained as a proximate result of the risk assessment or needs
2 screening.

3 (2) The person shall retain all of his or her due process rights throughout
4 the assessment and screening process and may release his or her records at his
5 or her discretion.

6 (3) The Vermont Supreme Court and the Department of Corrections
7 shall adopt rules related to the custody, control, and preservation of
8 information consistent with the confidentiality requirements of this section.

9 (f) The Vermont Supreme Court or its designee shall develop guidelines for
10 the appropriate use of court-ordered pretrial monitoring services based upon
11 the risk and needs of the defendant.

12 Sec. 3. RISK **ASSESSMENT** AND NEEDS SCREENING TOOLS AND
13 SERVICES

14 (a) The Department of Corrections shall select risk and needs assessment
15 and screening tools for use in the various decision points in the criminal justice
16 system, including pretrial, community supervision screening, community
17 supervision, prison screening, prison intake, and reentry. The Department
18 shall validate the selected tools for the population in Vermont.

19 (b) In selection and implementation of the tools, the Department shall
20 consider tools being used in other states and shall consult with and have the
21 cooperation of all criminal justice agencies.

1 (c) The Department shall have the tools available for use on or before
2 September 1, 2014. The Department, the Judiciary, the Defender General, and
3 the Executive Director and the Department of State’s Attorneys and Sheriffs
4 shall conduct training on the risk assessment tools on or before December 15,
5 2014.

6 (d) The Department, in consultation with law enforcement agencies and the
7 courts, shall contract for or otherwise provide pretrial services described in this
8 section, including performance of risk assessments, needs screenings, and
9 pretrial monitoring.

10 (e) Pretrial monitoring may include:

11 (1) reporting to the Court concerning the person’s compliance with
12 conditions of release;

13 (2) supporting the person in meeting the conditions imposed by the
14 Court, including the condition to appear in Court as directed;

15 (3) identifying community-based treatment, rehabilitative services,
16 recovery supports, and restorative justice programs; and

17 (4) supporting a prosecutor’s precharge program.

18 (f) The Department, in consultation with the Judiciary and the Center for
19 Criminal Justice Research, shall develop and implement a system to evaluate
20 performance of the pretrial services described in this section and report to the
21 General Assembly annually on or before December 15.

1 (g) The Secretary of Human Services, with staff and administrative support
2 from the Criminal Justice Capable Core Team, shall map services and assess
3 the impact of court referrals and the capacity of the current service provision
4 system in each region. The Secretary, in collaboration with service providers
5 and other stakeholders, shall consider regional resources, including services for
6 assessment, early intervention, treatment, and recovery support. Building on
7 existing models and data, the Secretary and the Criminal Justice Capable Core
8 Team shall develop recommendations for a system for referral based on the
9 appropriate level of need, identifying existing gaps to optimize successful
10 outcomes. Funding models for those services shall be examined by the
11 appropriate State departments.

12 * * * Alternative Justice Programs * * *

13 Sec. 4. **PROSECUTOR PRECHARGE PROGRAM GUIDELINES AND**
14 **REPORTING**

15 (a) The Department of State’s Attorneys and Sheriffs, in consultation with
16 the Judiciary and the Attorney General, shall develop broad guidelines for
17 precharge programs to ensure there is probable cause and that there are
18 appropriate opportunities for victim input and restitution.

19 (b) On or before October 1, 2014, and annually thereafter, the Executive
20 Director of the Department of State’s Attorneys and Sheriffs shall report to the
21 General Assembly detailing the alternative justice programs that exist in each

1 county together with the protocols for each program, the annual number of
2 persons served by the program, and a plan for how a sequential intercept model
3 can be employed in the county. The report shall be prepared in cooperation
4 with the Director of Court Diversion, a co-chair of the Community Justice
5 Network of Vermont, and State, municipal, and county law enforcement
6 officials.

7 Sec. 5. [Deleted.]

8 Sec. 6. 13 V.S.A. § 5362(c) is amended to read:

9 (c) The Restitution Unit shall have the authority to:

10 * * *

11 (7) Enter into a repayment contract with a juvenile or adult accepted into
12 a diversion program or alternative justice program and to bring a civil action to
13 enforce the contract when a diversion program has referred an individual
14 pursuant to 3 V.S.A. § 164a or an alternative justice program contract pursuant
15 to section 7554c of this title or a prosecutor precharge program.

16 Sec. 7. 13 V.S.A. § 5363(d)(2) is amended to read:

17 (2) The Restitution Unit may make advances of up to \$10,000.00
18 \$5,000.00 under this subsection to the following persons or entities:

19 * * *

20 (B) A victim who is a natural person or the natural person's legal
21 representative in a case where the defendant, before or after an adjudication of

1 guilt, enters into a drug court contract or an alternative justice program contract
2 pursuant to section 7554c of this title or a prosecutor precharge program
3 requiring payment of restitution.

4 * * * Criminal Provisions * * *

5 Sec. 8. 18 V.S.A. § 4235b is added to read:

6 § 4235b. TRANSPORTATION OF DRUGS INTO THE STATE:

7 AGGRAVATING FACTOR

8 When imposing a sentence for a felony violation of dispensing or selling a
9 regulated drug in violation of this chapter, the Court shall consider whether the
10 person knowingly and unlawfully transported the regulated drug into Vermont
11 with the intent to sell or dispense the drug.

12 Sec. 9. 13 V.S.A. § 1201 is amended to read:

13 § 1201. BURGLARY

14 (a) A person is guilty of burglary if he or she enters any building or
15 structure knowing that he or she is not licensed or privileged to do so, with the
16 intent to commit a felony, petit larceny, simple assault, or unlawful mischief.
17 This provision shall not apply to a licensed or privileged entry, or to an entry
18 that takes place while the premises are open to the public, unless the person,
19 with the intent to commit a crime specified in this subsection, surreptitiously
20 remains in the building or structure after the license or privilege expires or
21 after the premises no longer are open to the public.

1 (b) As used in this section, ~~the words “building,” “structure,” and~~
2 ~~“premises”;~~

3 (1) “Building,” “premises,” and “structure” shall, in addition to their
4 common meanings, include and mean any portion of a building, structure, or
5 premises which differs from one or more other portions of such building,
6 structure, or premises with respect to license or privilege to enter, or to being
7 open to the public.

8 (2) “Occupied dwelling” means a building used as a residence, either
9 full-time or part-time, regardless of whether someone is actually present in the
10 building at the time of entry.

11 (c)(1) A person convicted of burglary into an occupied dwelling shall be
12 imprisoned not more than 25 years or fined not more than \$1,000.00, or both.
13 Otherwise, a person convicted of burglary shall be imprisoned not more than
14 15 years or fined not more than \$1,000.00, or both.

15 (2) When imposing a sentence under this section, the Court shall
16 consider whether, during commission of the offense, the person:

17 (A) entered the building when someone was actually present;

18 (B) used or threatened to use force against the occupant; or

19 (C) carried a dangerous or deadly weapon, openly or concealed,

20 during the commission of the offense, and the person has not been convicted of
21 a violation of section 4005 of this title in connection with the offense.

1 Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

2 The Department of Public Safety, in consultation with the Department of
3 Health, shall examine 18 V.S.A. § 4234 (depressant, stimulant, narcotic drug)
4 for the purpose of establishing clear dosage amounts for narcotics as they
5 relate to unlawful possession, dispensing, and sale. The Department shall
6 consider section 4234 in relation to 18 V.S.A. § 4233 (heroin). The
7 Department shall report its recommendations to the Senate and House
8 Committees on Judiciary on or before December 15, 2014.

9 * * * Regulation of Opiates * * *

10 Sec. 11. DVHA AUTHORITY; USE OF AVAILABLE SANCTIONS

11 The Department of Vermont Health Access shall use its authority to
12 sanction Medicaid-participating prescribers operating in bad faith or not in
13 compliance with State or federal requirements.

14 Sec. 12. [Deleted.]

15 Sec. 13. VPMS QUERY; MEDICAID PARTICIPATION; RULEMAKING

16 The Secretary of Human Services shall adopt rules requiring all Medicaid
17 participating providers, whether licensed in or outside Vermont, to query the
18 Vermont Prescription Monitoring System (VPMS) prior to prescribing
19 buprenorphine or a drug containing buprenorphine to a Vermont Medicaid
20 beneficiary.

1 condition of pretrial release, probation, furlough, or parole for a violation of
2 this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug
3 overdose, or for being within close proximity to any person at the scene of the
4 drug overdose.

5 * * *

6 **Sec. 18. AGENCY OF HUMAN SERVICES POSITION**

7 One exempt position is created within the Agency of Human Services for
8 the purpose of overseeing the implementation of the pretrial services of
9 this act.

10 Sec. 19. EFFECTIVE DATES

11 (a) Secs. 2, 6, and 7 shall take effect on January 1, 2015.

12 (b) This section and Secs. 1 (legislative intent), 3 (risk assessment and
13 needs screening tools), 4 (prosecutor precharge programs and reporting),
14 10 (Department of Public Safety report), 13 (VPMS query; rulemaking),
15 14 (medication assisted therapy, rulemaking), and 17 (immunity from liability)
16 shall take effect on passage.

17 (c) The remaining sections shall take effect on July 1, 2014.

18 (Committee vote: _____)

19 _____
20 Representative _____

21 FOR THE COMMITTEE