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S.171

Introduced by Senator Sears

Referred to Committee on Judiciary

Date: January 5, 2016

Subject: Crimes and criminal procedure; bail and recognizance; pretrial

Statement of purpose of bill as introduced: This bill proposes to make persons who are cited into court for nonlisted crime misdemeanors eligible for pretrial risk assessments and needs screenings and to clarify that such assessments and screenings are voluntary.

An act relating to eligibility for pretrial risk assessment and needs screening

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 13 V.S.A. § 7554c is amended to read:~~

~~§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS~~

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

~~(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental~~

1 ~~health issue that would warrant a subsequent court order for a more detailed~~
2 clinical assessment.

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

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

8 (A) misdemeanors and felonies, excluding listed crimes, cited into
9 court;

10 (B) persons cited or arrested for an offense that is not a listed crime
11 who are identified by law enforcement, the prosecution, the defense, probation
12 and parole personnel, the Court, a treatment provider, or a family member or
13 friend as having a substantial substance abuse or mental health issue;

14 (C) misdemeanor and felony drug offenses, excluding trafficking,
15 cited into court; and

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

1 ~~(2) As used in this section, "listed crime" shall have the same meaning~~
2 as provided in section 5301 of this title.

3 (3) Unless ordered as a condition of release under section 7554 of this
4 title, participation in an assessment or screening shall be voluntary.

5 (4) In the event an assessment or screening cannot be obtained prior to
6 arraignment, the Court shall direct the voluntary assessment and screening to
7 be conducted as soon as practicable.

8 (5) A person who qualifies pursuant to subdivisions (1)(A)-(D) of this
9 subsection and who has an additional pending charge or a violation of
10 probation shall not be excluded from being offered a risk assessment or needs
11 screening unless the other charge is a listed crime.

12 (6)(A) The Administrative Judge and Court Administrator, in
13 consultation with the Secretary of Human Services and the Commissioner of
14 Corrections, shall develop a statewide plan for the phased, consistent rollout of
15 the categories identified in subdivisions (1)(A) through (D) of this subsection,
16 in the order in which they appear in this subsection. The Administrative Judge
17 and Court Administrator shall present the plan to the Joint Legislative
18 Corrections Oversight Committee on or before October 15, 2014.

19 (B) All persons whose offense or status falls into one of the
20 categories shall be eligible for a risk assessment or needs screening on or
21 before October 15, 2015. Prior to that date, a person shall not be guaranteed

1 ~~the offer of a risk assessment or needs screening solely because the person's~~
2 offense or status falls into one of the categories. Criminal justice professionals
3 charged with implementation shall adhere to the plan.

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

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

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

10 (B) participate in a clinical assessment by a substance abuse or
11 mental health treatment provider; and

12 (C) comply with any level of treatment or recovery support
13 recommended by the provider.

14 (D), (E) [Repealed.]

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

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

1 ~~(e)(1) Information obtained from the person during the risk assessment or~~
2 needs screening shall be exempt from public inspection and copying under the
3 Public Records Act and, except as provided in subdivision (2) of this
4 subsection, only may be used for determining bail, conditions of release, and
5 appropriate programming for the person in the pending case. The immunity
6 provisions of this subsection apply only to the use and derivative use of
7 information gained as a proximate result of the risk assessment or needs
8 screening.

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

12 (3) The Vermont Supreme Court in accordance with judicial rulemaking
13 as provided in 12 V.S.A. § 1 shall promulgate and the Department of
14 Corrections in accordance with the Vermont Administrative Procedure Act
15 pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody,
16 control, and preservation of information consistent with the confidentiality
17 requirements of this section. Emergency rules adopted prior to January 1,
18 2015 pursuant to this section shall be considered to meet the “imminent peril”
19 standard under 3 V.S.A. § 844(a).

20 Sec. 2. EFFECTIVE DATE

21 ~~This act shall take effect on passage.~~

Sec. 1. 13 V.S.A. § 7554c is amended to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

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

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

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

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

(A) misdemeanors and felonies, excluding listed crimes and drug trafficking, cited into court; and

~~(B) persons cited or arrested for an offense that is not a listed crime who are identified by law enforcement, the prosecution, the defense, probation and parole personnel, the Court, a treatment provider, or a family member or friend as having a substantial substance abuse or mental health issue;~~

~~(C) misdemeanor and felony drug offenses, excluding trafficking, cited into court; and~~

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

(2) As used in this section, "listed crime" shall have the same meaning as provided in section 5301 of this title and "drug trafficking" means offenses listed as such in Title 18.

(3) Unless ordered as a condition of release under section 7554 of this title, participation in ~~an~~ risk assessment or needs screening shall be voluntary.

(4) In the event an assessment or screening cannot be obtained prior to arraignment, ~~the Court shall direct~~ the risk assessment and needs screening ~~to~~ shall be conducted as soon as practicable.

(5) A person who qualifies pursuant to subdivisions (1)(A)-(D) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime.

(6)(A) The Administrative Judge and Court Administrator, in consultation with the Secretary of Human Services and the Commissioner of Corrections, shall develop a statewide plan for the phased, consistent rollout of the categories identified in subdivisions (1)(A) through (D) of this subsection, in the order in which they appear in this subsection. The Administrative Judge and Court Administrator shall present the plan to the Joint Legislative Corrections Oversight Committee on or before October 15, 2014.

(B) All persons whose offense or status falls into one of the categories shall be eligible for a risk assessment or needs screening on or ~~before~~ after October 15, 2015. Prior to that date, a person shall not be guaranteed the offer of a risk assessment or needs screening solely because the person's offense or status falls into one of the categories. Criminal justice professionals charged with implementation shall adhere to the plan.

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

(d)(1) ~~At arraignment, in consideration of the risk assessment and needs screening, the Court may order the person to comply with any of the following conditions:~~

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

(B) participate in a clinical assessment by a substance abuse or mental health treatment provider; and follow the recommendations of the provider.

~~(C) comply with any level of treatment or recovery support recommended by the provider follow the recommendation of the pretrial monitor if the person has voluntarily agreed to participate in a risk assessment or needs screening.~~

~~(D), (E) [Repealed.]~~

(2) The Court may order the person to follow the recommendation of the pretrial monitor if the person has voluntarily agreed to participate in a risk assessment or needs screening post arraignment completed a risk assessment or needs screening.

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

(~~3~~)(4) The conditions authorized in subdivision (1) of this subsection shall be in addition to any other conditions of release permitted by law and shall not limit the Court in any way.

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

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

(3) The Vermont Supreme Court in accordance with judicial rulemaking as provided in 12 V.S.A. § 1 shall promulgate and the Department of Corrections in accordance with the Vermont Administrative Procedure Act pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section. Emergency rules adopted prior to January 1, 2015 pursuant to this section shall be considered to meet the “imminent peril” standard under 3 V.S.A. § 844(a).

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.