



To: House Judiciary
From: Willa Farrell and Karen Vastine
Date: April 11, 2014
Re: S.295

Thank you for the opportunity to testify on S.295 earlier this week. We support the goals of the bill and offer these suggestions for your consideration.

On Wednesday we noted that best practice is to screen all eligible individuals, and not to rely on the subjective determination of an individual regarding whether a screening is appropriate. We recognize, however, that resources may limit the State's ability to screen all eligible individuals, in which case applying the screening tool uniformly to a set of crimes is a possible solution. We recommend that the bill narrow the population of individuals who are eligible, perhaps to those who are detained by law enforcement, or to those who are charged with non-violent misdemeanor offenses. The latter approach is used in Chittenden County's RICC in which all individuals who have committed offenses such as disorderly conduct, retail theft, unlawful trespass, possession of drugs, larceny and frauds are screened and afforded the opportunity to participate in the program.

We recommend adding language in Section 1 to explicitly state that screening and assessment results are used to inform decisions by the prosecutor and the Court as follows:

Sec. 1. LEGISLATIVE FINDINGS

(c) The General Assembly recommends use of evidence-based risk assessments and needs screening tools for eligible offenses to provide information to the Court for the purpose of determining bail and appropriate conditions of release and inform decisions by the State's Attorney and the Court related to an offender's participation and level of supervision in an alternative justice program.

Section 2 states the objective of the risk assessment; we suggest also stating the objective of the needs screening. It is important to screen for all needs, not just substance abuse or mental health needs, as other criminogenic factors, or needs, often contribute to unlawful behavior. Proposed wording:

Sec. 2. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a) 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. The objective of a pretrial screening is to rapidly identify offenders with a higher risk of re-offending and higher likelihood of having multiple criminogenic needs, including substance abuse or mental health needs.

(b)(1) If a person is arrested or cited for an eligible offense, the person shall be offered a risk assessment and, ~~if appropriate, a substance abuse or mental health criminogenic~~ needs screening, ~~or both~~, prior to arraignment.

(2) Any person arrested and charged with an offense that is not an eligible offense or an offense for which bail may be denied pursuant to section 7553 or 7553a of this title may be offered a risk assessment and, ~~if appropriate, a substance abuse or mental health criminogenic~~ needs screening, ~~or both~~, prior to arraignment.

As screening encompasses mental health as well as substance abuse, you may want to expand who may do an assessment. A possible addition:

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

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

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

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

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

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

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

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

We ask that minor corrections are made to the naming of our positions (changing plural to singular) in last sentence of Section 4.

Sec. 4. ALTERNATIVES TO TRADITIONAL CRIMINAL JUSTICE MODEL

(c) On or before October 1, 2014, and annually thereafter, the Executive Director of State's Attorneys and Sheriffs shall report to the General Assembly detailing the alternative justice programs that exist in each county together with the protocols for each program, the annual number of persons served by the program, and a plan for how a sequential intercept model can be employed in the county. The report shall be prepared in cooperation with the ~~Director~~s of Court Diversion, ~~co-chair~~s of the Community Justice Network of Vermont, and State, municipal, and county law enforcement officials.

We appreciate that community-based restorative justice programs have been added throughout the bill and recommend additional wording to emphasize meeting the needs of victims and to reference existing law that states principles of Restorative Justice shape the criminal justice system.

Sec. 4. ALTERNATIVES TO TRADITIONAL CRIMINAL JUSTICE MODEL

(a) It is the intent of the General Assembly that law enforcement officials and criminal justice professionals develop and maintain programs at every stage of the criminal justice system to provide alternatives to a traditional punitive criminal justice response consistent with 28 V.S.A. § 2a for people who, consistent with public safety, can effectively and justly benefit from those alternative responses. Commonly referred to as the sequential intercept model, this approach was designed to identify five points within the criminal justice system where innovative approaches to offenders and offending behavior could be taken to divert individuals away from a traditional criminal justice response to crime.

Sec. 5. 13 V.S.A. § 7554d is added to read:

§ 7554d. PRE-CHARGE PROGRAMS

(a) At the sole discretion of the prosecutor, following a written protocol, consistent with community-based restorative justice principles set forth in 28 V.S.A. § 2a, established by the prosecutor and filed with the Executive Director of State's Attorneys and Sheriffs, a person who has been arrested or cited may participate in a pre-charge program. The pre-charge program shall address, as appropriate, the needs of victims and the community, and the offenders' needs, including substance abuse, addiction recovery, or mental health issues. ~~that addresses substance abuse, addiction recovery, mental health issues, or community-based restorative justice principles consistent with a written protocol established by the prosecutor and filed with the Executive Director of State's Attorneys and Sheriffs.~~ A person who does not qualify for a pre-charge program may be eligible for other alternative justice programs.

We would be happy to answer any questions or provide additional testimony to the Committee.

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