

To: House Judiciary, Corrections and Institutions, and Human Services Committees
From: Robert Sand, Senior Policy and Legal Advisor, DPS
Re: S.295
Date: 4-16-14

S.295

An act relating to pretrial services, risk assessments, and criminal justice programs

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

* * * Pretrial Services * * * Sec.

1. LEGISLATIVE FINDINGS

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

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

(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 related to an offender's participation and level of supervision in an alternative justice program.

(d) The General Assembly intends this act to be a continuation of justice reinvestment efforts initiated in 2007 by the Legislative, Judicial, and Executive Branches. Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and

reinvest savings in strategies that can decrease crime and strengthen communities.

(e) Buprenorphine/Naloxone (Suboxone or Subutex) is a well-known medication used in the treatment of opioid addiction. Vermont spends \$8.3 million in Medicaid funds annually on these drugs. As medicated-assisted treatment for opiate addiction has increased substantially in the last several years, so has illegal diversion of these drugs and their misuse. Suboxone is currently the number one drug smuggled into Vermont correctional facilities and evidence suggests that the nonmedical use of such drugs is gaining in popularity. The General Assembly urges the administration to prioritize efforts to ensure that people with opiate addictions are provided access to necessary medication, while taking all possible measures to prevent the diversion and misuse of these drugs, including working with drug manufacturers.

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

§ 7554c. 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.

(insert language about the objective of needs screening)

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

Rework (b)(1) and (b)(2) to create a phased, three part rollout as follows:

- 1. Misdemeanor drug offenses cited into court**
- 2. Unlisted felony offenses cited into court**
- 3. Lodged Defendants**

(This will substantially narrow the population currently defined in Section 2, allow for

program development with a less risky population first, avoid “flooding” community providers with too many people, and provide time to develop community supports and connections.

We might also create an “allowance” for an additional screening of people who are not part of groups 1-3 if the court, in consultation with the parties, deems it appropriate.)

~~(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 needs screening, or both, prior to arraignment. In the event an assessment or screening cannot be obtained prior to arraignment, the Court shall direct the assessment and screening to be conducted as soon as practicable. Participation in an assessment or screening shall be voluntary. As used in this section, “eligible offense” means any offense that is not a listed crime pursuant to section 5301 of this title, except that burglary into an occupied dwelling pursuant to subdivision 1201(c)(3) of this title shall also qualify as an eligible offense.~~

~~(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 needs screening, or both, prior to arraignment. In the event an assessment or screening cannot be obtained prior to arraignment, the Court shall direct the assessment and screening to be conducted as soon as practicable. Participation in an assessment or screening shall be voluntary.~~

The voluntary nature of the screening and assessment in this section does not restrict the court’s ability to order other screenings or assessments as a condition of release.

(c) The results of the assessment and 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 and the Court.

(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 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.

(2) If possible, the Court shall set the date and time for the assessment at arraignment. In the alternative, the compliance 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) 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 be interpreted to create a limitation on the court.**

(e) 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 shall not be released or used for any purpose except for determining bail, conditions of release, and appropriate programming for the person in the pending case. The person shall retain all of his or her due process rights throughout the assessment and screening process and may

release his or her records at his or her discretion. The Vermont Supreme Court and the Department of Corrections shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section.

Sec. 3. RISK AND NEEDS SCREENING TOOLS AND SERVICES

(a) The Department of Corrections shall select risk and needs assessment and screening tools for use in the various decision points in the criminal justice system, including pretrial, community supervision screening, community supervision, prison screening, prison intake, and reentry. The Department shall **undertake the process of validating** ~~validate~~ the selected tools for the population in Vermont.

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

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

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

(e) Compliance monitoring ~~may~~ **shall** include:

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

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

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

(4) Supporting a prosecutor's precharge program.

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

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

* * * Sequential Intercept Model and Alternative

Justice Programs * * *

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 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. These intercept points begin in the community with law enforcement interaction with citizens, proceed through arrest, the judicial process, and sentencing, and conclude with release back into communities. Alternative justice programs may include the employment of police-social workers, community-based restorative justice programs, community-based dispute resolution, pre-charge programs, pretrial services and case management, recovery support, drug and DUI treatment courts, suspended fine programs, and offender reentry programs.

(b) The Department of State's Attorneys and Sheriffs, ~~in consultation with the Judiciary and the Attorney General,~~ shall develop broad guidelines for **prosecutor precharge** ~~these alternative justice~~ programs to ensure there is probable cause and that ~~†~~ there are appropriate opportunities for victim input and restitution.

(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

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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 Directors of Court Diversion, co-chairs of the Community Justice Network of Vermont, and State, municipal, and county law enforcement officials.

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

~~§ 7554d. PRE-CHARGE PROGRAMS~~

~~(a) At the sole discretion of the prosecutor, a person who has been arrested or cited may participate in a pre-charge program 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.~~

~~(b) Compliance monitors shall be available and utilized in the pre-charge program in the same manner as under section 7554e of this title; however, in the pre-charge program, the monitor shall report to the prosecutor about the person's participation in the program and not to the Court.~~

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

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

* * *

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program or alternative justice program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a or an alternative justice program contract pursuant

to sections 7554c and 7554d of this title.

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

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

* * *

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract or an alternative justice program contract pursuant to sections 7554c and 7554d of this title requiring payment of restitution.

* * * Criminal Provisions * * * Sec.

8. 18 V.S.A. § 4233(d) is added to read:

(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting heroin into Vermont with the intent to sell or dispense the heroin shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

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

§ 1201. BURGLARY

(a) A person is guilty of burglary if he or she enters any building or structure knowing that he or she is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief.

This provision shall not apply to a licensed or privileged entry, or to an entry that takes place while the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in the building or structure after the license or privilege expires or after the premises

no longer are open to the public.

(b) As used in this section, ~~the words “building,” “structure,” and “premises”:~~ _

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

(2) “Occupied dwelling” means a building used as a residence, regardless of whether someone is actually present in the building at the time of entry.

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

(2) A person convicted of burglary and who carries a dangerous or deadly weapon, openly or concealed, shall be imprisoned not more than 20 years or fined not more than \$10,000.00, or both.

(3) A person convicted of burglary into an occupied dwelling:

(A) shall be imprisoned not more than 25 years or fined not more than \$1,000.00, or both; or

(B) shall be imprisoned not more than 30 years or fined not more than \$10,000.00, or both, if the person carried a dangerous or deadly weapon, openly or concealed, during commission of the offense.

(4) A person convicted of burglary into an occupied dwelling when

someone is actually present in the building at the time of entry and who carries a dangerous or deadly weapon, openly or concealed, or who uses or threatens to use force against the occupant during the commission of the offense shall be imprisoned not more than 40 years or fined not more than \$10,000.00, or both.

Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

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

* * * Regulation of Opiates * * *

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

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

Sec. 12. [DELETED]

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

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

Sec. 14. MEDICATION-ASSISTED THERAPY; RULEMAKING

The Commissioner of Health shall adopt rules relating to medication-assisted therapy for opioid dependence for physicians treating fewer than 30 patients, which shall include a requirement that such physicians ensure that their patients receive appropriate substance abuse counseling from a licensed clinical professional.

Sec. 15. [DELETED] Sec.

16. [DELETED]

Sec. 17. 18 V.S.A. § 4254 is amended to read:

§ 4254. IMMUNITY FROM LIABILITY

* * *

(d) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order), for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(e) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

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Sec. 18. EFFECTIVE DATES

(a) Secs. 2, 5, 6, and 7 shall take effect on January 1, 2015.

(b) This section and Secs. 1 (legislative intent), 3 (risk assessment and needs screening tools), 4 (alternatives to traditional criminal justice model), 10 (Department of Public Safety report), 13 (VPMS query; rulemaking), 14 (medication assisted therapy, rulemaking), and 17 (immunity from liability) shall take effect on passage.

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

Note:
renumbering needed if Section 5 eliminated.
Exempt position language needs to be added