

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) (Moved from Sec. 5) It is the intent of the General Assembly that law
9 enforcement officials and criminal justice professionals develop and maintain
10 programs at every stage of the criminal justice system consistent with the
11 principles of restorative justice to provide alternatives to a traditional punitive
12 criminal justice response for people who, consistent with public safety, can
13 effectively and justly benefit from those alternative responses. Commonly
14 referred to as the sequential intercept model, this approach was designed to
15 identify five points within the criminal justice system where innovative
16 approaches to offenders and offending behavior could be taken to divert
17 individuals away from a traditional criminal justice response to crime. These
18 intercept points begin in the community with law enforcement interaction with
19 citizens, proceed through arrest, the judicial process, and sentencing, and
20 conclude with release back into communities. Alternative justice programs
21 may include the employment of police-social workers, community-based

1 restorative justice programs, community-based dispute resolution, pre-charge
2 programs, pretrial services and case management, recovery support, DUI and
3 other drug treatment courts, suspended fine programs, and offender reentry
4 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 inform decisions by the State's Attorney and the
17 Court related to an offender's participation and level of supervision in an
18 alternative justice program. As used in this act,

19 (1) "Clinical assessment" means a detailed and formalized review of
20 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 (e) 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 (f) 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 but not to include people charged with a sexual
6 crime or an offense punishable by up to life imprisonment.

7 (E) Persons not charged with a listed crime who are identified by law
8 enforcement, the prosecution, the defense, probation and parole, the Court, a
9 treatment provider, or a family member or friend to have a substantial
10 substance abuse or mental health issue.

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

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

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

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

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
11 treatment provider;

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

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

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

19 (2) If possible, the Court shall set the date and time for the assessment at
20 arraignment. In the alternative, the pretrial monitor shall coordinate the date,

1 time, and location of the clinical assessment and advise the Court, the person
2 and his or her attorney, and the prosecutor.

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

6 (4) The Administrative Judge and the Court Administrator, in
7 consultation with the Secretary of Human Services and the Commissioner of
8 Corrections, shall develop a statewide plan for the phased, statewide rollout of
9 the categories identified in subdivisions (b)(1)(A) through (E) of this
10 subsection. All categories shall be eligible for a risk assessment or needs
11 screening no later than January 1, 2016, but no one category is guaranteed to
12 be offered a risk assessment or needs screening prior to that date. Criminal
13 justice professionals charged with implementation shall adhere to the plan.

14 (e)(1) Information obtained from the person during the risk assessment or
15 needs screening shall be exempt from public inspection and copying under the
16 Public Records Act and only may be used for determining bail, conditions of
17 release, and appropriate programming for the person in the pending case. The
18 immunity provisions of this section apply only to the use and derivative use of
19 evidence gained as a proximate result of the risk assessment or needs
20 screening. The person shall retain all of his or her due process rights

1 throughout the assessment and screening process and may release his or her
2 records at his or her discretion.

3 2. The Vermont Supreme Court and the Department of Corrections
4 shall adopt rules related to the custody, control, and preservation of
5 information consistent with the confidentiality requirements of this section.

6 (f) The Administrative Judge and Court Administrator shall develop
7 guidelines for the appropriate use of court-ordered pretrial monitoring services
8 based upon the risk and needs of the offender.

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10
11 **Sec. 3. RISK ASSESSMENT AND NEEDS SCREENING TOOLS AND**
12 **SERVICES**

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

*defer to
H. Corrections*

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 PROGRAMS AND REPORTING**

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

18 (b) On or before October 1, 2014, and annually thereafter, the Executive
19 Director of the Department of State's Attorneys and Sheriffs shall report to the
20 General Assembly detailing the alternative justice programs that exist in each
21 county together with the protocols for each program, the annual number of

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

* * * Criminal Provisions * * *

1
2 Sec. 8. 18 V.S.A. § 4233(d) is added to read:

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

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

8 § 1201. BURGLARY

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

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

19 (1) “Building,” “premises,” and “structure” shall, in addition to their
20 common meanings, include and mean any portion of a building, structure, or
21 premises which differs from one or more other portions of such building,

1 structure, or premises with respect to license or privilege to enter, or to being
2 open to the public.

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

6 ~~(c)(1) A person convicted of burglary into an occupied dwelling shall be~~
7 ~~imprisoned not more than 25 years or fined not more than \$1,000.00, or both.~~
8 ~~Otherwise a person convicted of burglary shall be imprisoned not more than~~
9 ~~15 years or fined not more than \$1,000.00, or both.~~

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

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

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

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

19 (4) A person convicted of burglary into an occupied dwelling when
20 someone is actually present in the building at the time of entry and who carries
21 a dangerous or deadly weapon, openly or concealed, or who uses or threatens

1 to use force against the occupant during the commission of the offense shall be
2 imprisoned not more than 40 years or fined not more than \$10,000.00, or both.

3 Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

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

11 * * * Regulation of Opiates * * *

12 Secs. 11- 16 from HHS

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

14 § 4254. IMMUNITY FROM LIABILITY

15 * * *

16 (d) A person who seeks medical assistance for a drug overdose or is the
17 subject of a good faith request for medical assistance pursuant to subsection (b)
18 or (c) of this section shall not be subject to any of the penalties for violation of
19 13 V.S.A. § 1030 (violation of a protection order), for a violation of this
20 chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose,

1 or for being within close proximity to any person at the scene of the drug
2 overdose.

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

10 * * *

11 ~~Sec. 18. AGENCY OF HUMAN SERVICES POSITION~~

12 ~~One exempt position is created within the Agency of Human Services for~~
13 ~~the purpose of overseeing the implementation of this act~~

14 Sec. 19. EFFECTIVE DATES

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

16 (b) This section and Secs. 1 (legislative intent), 3 (risk assessment and
17 needs screening tools), 4 (prosecutor precharge programs and reporting),
18 10 (Department of Public Safety report), 13 (VPMS query; rulemaking),
19 14 (medication assisted therapy, rulemaking), and 17 (immunity from liability)
20 shall take effect on passage.

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

1

2 (Committee vote: _____)

3

4

Representative _____

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FOR THE COMMITTEE