

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:

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

4 (2) “Needs screening” means a preliminary systematic procedure to
5 evaluate the likelihood that an individual has a substance use or a mental health
6 condition.

7 (3) “Clinical assessment” means, after a client has been screened, the
8 procedures by which a licensed or otherwise approved counselor identifies and
9 evaluates and individual’s strengths, weaknesses, problems and needs for the
10 development of a treatment plan, to be conducted after a client has been
11 screened.

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

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

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

8 (h) Approximately 54,000 Vermonters have abused, or been dependent on,
9 alcohol or illicit drugs in the past year, according to the current National
10 Survey on Drug Use and Health. More people abuse or are dependent on
11 alcohol (approximately 39,000) than all illicit drugs combined (18,000). Many
12 Vermonters struggle with both alcohol and illicit drugs. Substance abuse is
13 expensive, and not solely due to the cost of providing treatment. Research
14 indicates that \$1.00 invested in addiction treatment saves between \$4.00 and
15 \$7.00 in reduced drug-related crime, criminal justice costs, and theft. Earlier
16 intervention to provide services before major problems develop can save even
17 more.

18 (i) According to the Agency of Human Services' Report on Substance
19 Continuum of Services and Recommendations, dated January 15, 2014, despite
20 the number of people with substance use disorders, this condition is
21 significantly under-treated for many reasons. In addition, it reports that one of

1 the challenges associated with attracting and retaining qualified individuals to
2 the field of substance abuse treatment and prevention is that there are
3 insufficient training opportunities, no opportunities for private practitioner
4 Licensed Alcohol and Drug Counselors (LADC) to receive payment for
5 providing services to Medicaid eligible patients, and low wages for LADCs
6 working in community provider settings.

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 **personnel**, the

11 Court, a treatment provider, or a family member or friend as having a

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

14 (f) The Administrative Judge shall develop guidelines for the appropriate
15 use of court-ordered pretrial monitoring services based upon the risk and needs
16 of the defendant.

17 Sec. 3. RISK ASSESSMENT AND NEEDS SCREENING TOOLS AND
18 SERVICES

19 (a) The Department of Corrections shall select risk and needs assessment
20 and screening tools for use in the various decision points in the criminal justice
21 system, including pretrial, community supervision screening, community

1 supervision, prison screening, prison intake, and reentry. **The Department**
2 **shall validate the selected tools for the population in Vermont.**

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

6 (c) The Department shall have the tools available for use on or before
7 September 1, 2014. The Department, the Judiciary, the Defender General, and
8 the Executive Director and the Department of State's Attorneys and Sheriffs
9 shall conduct training on the risk assessment tools on or before December 15,
10 2014.

11 (d) The Department, in consultation with law enforcement agencies and the
12 courts, shall contract for or otherwise provide pretrial services described in this
13 section, including performance of risk assessments, needs screenings, and
14 pretrial monitoring. **The contract shall include requirements to comply with**
15 **data collection and evaluation procedures.**

16 (e) Pretrial monitoring may include:

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

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

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

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

4 (f)(1) The Department, in consultation with the Judiciary and the Crime
5 Research Group, shall develop and implement a system to evaluate goals and
6 performance of the pretrial services described in this section and report to the
7 General Assembly annually on or before December 15.

8 (2) The Agency of Human Services, in consultation with the
9 Judiciary, shall ensure that a study is conducted to include an outcome study,
10 process evaluation and cost benefit analysis.

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

1 shall be inclusive of all initiatives within the Agency of Human Services,
2 including those within the Blueprint for Health and Screening, Brief
3 Intervention, and Referral for Treatment (SBIRT), as well as initiatives within
4 the Green Mountain Care Board and the State Innovation Model (SIM) grant.

5 * * * Alternative Justice Programs * * *

6 Sec. 4. PROSECUTOR PRECHARGE PROGRAM GUIDELINES AND
7 REPORTING

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

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

21 Sec. 5. [Deleted.]

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

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

3 * * *

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

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

10 (2) The Restitution Unit may make advances of up to ~~\$10,000.00~~
11 \$5,000.00 under this subsection to the following persons or entities:

12 * * *

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

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

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

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

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

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

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

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

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

20 Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

1 **(b) The pilot project shall offer continued medication-assisted treatment for**
2 **opioid dependence with methadone or buprenorphine to incarcerated persons**
3 **who were participating in medication-assisted treatment in the community**
4 **immediately prior to incarceration as follows:**

5 **(1) for a period of 180 days from the date of incarceration for a person**
6 **held on detainee status, followed by a prescribed taper; or**

7 **(2) for a period of one year from the date of incarceration for a person**
8 **-serving a sentence, followed by a prescribed taper.**

9 **(c) As used in this section, “prescribed taper” means a clinically**
10 **appropriate medication taper that is designed to minimize withdrawal**
11 **symptoms and limit avoidable suffering.**

12 **(d) The Commissioner of Corrections shall publish an interim revision**
13 **memorandum to replace Directive 363.01. The Medication-Assisted**
14 **Treatment for Inmates Work Group shall provide details of the demonstration**
15 **project, including:**

16 **(1) an update on the implementation of the recommendations provided**
17 **in the “Medication-Assisted Treatment for Inmates: Work Group Report and**
18 **Recommendations” submitted to the Vermont General Assembly on November**
19 **26, 2013;**

20 **(2) medication-assisted treatment time frames;**

1 (3) Department protocols for detainees and inmates transitioning in and
2 out of treatment settings, or between correctional facilities and treatment
3 services;

4 (4) protocols regarding medical tapers, detoxification, and withdrawal;

5 (5) plans and timing for expansion of the pilot project; and

6 (6) an evaluation plan that includes appropriate metrics for determining
7 treatment efficacy, reincarceration episodes, Department- and
8 community-based collaboration challenges, and system costs.

9 (e) By July 30, 2014, the Department shall enter into memoranda of
10 understanding with the Department of Health and with hub treatment providers
11 regarding ongoing medication-assisted treatment for persons in the custody of
12 the Department.

13 (f) The Department shall collaborate with the Department of Health to
14 facilitate the provision of opioid overdose prevention training for persons who
15 are incarcerated and distribution of overdose rescue kits with naloxone at
16 correctional facilities to persons who are transitioning from incarceration back
17 into the community.

18 (g) The Departments of Corrections and of Health shall continue the
19 Medication-Assisted Treatment for Inmates Work Group created by 2013 Acts
20 and Resolves No. 67, Sec. 11 to inform and monitor implementation of the
21 demonstration project. The Departments shall evaluate the demonstration

1 project and provision of medication-assisted treatment to persons who are
2 incarcerated in Vermont and report their findings, including a proposed
3 schedule of expansion, to the House Committees on Corrections and
4 Institutions, on Human Services, and on Judiciary and the Senate Committees
5 on Health and Welfare and on Judiciary on or before January 1, 2015.

6 Sec. 13. VPMS QUERY; RULEMAKING

7 The Secretary of Human Services shall adopt rules requiring:

8 (a) All Medicaid participating providers, whether licensed in or outside
9 Vermont, who prescribe buprenorphine or a drug containing buprenorphine to
10 a Vermont Medicaid beneficiary to query the Vermont Prescription Monitoring
11 System the first time they prescribe buprenorphine or a drug containing
12 buprenorphine for the patient and at regular intervals thereafter. Regular
13 intervals shall exceed the requirements for other Schedule III pharmaceuticals,
14 and queries shall be done prior to prescribing a replacement prescription. The
15 rules shall also include dosage thresholds, which may be exceeded only with
16 prior approval from the Chief Medical Officer of the Department of Vermont
17 Health Access or designee.

18 (b) All providers licensed in Vermont who prescribe buprenorphine or a
19 drug containing buprenorphine to a Vermont patient who is not a Medicaid
20 beneficiary to query the Vermont Prescription Monitoring System the first time
21 they prescribe buprenorphine or a drug containing buprenorphine for the

1 patient and at regular intervals thereafter. Regular intervals shall exceed the
2 requirements for other Schedule III pharmaceuticals and queries shall be done
3 prior to prescribing a replacement prescription. The rules shall also include
4 dosage thresholds.

5 **Sec. 14. MEDICATION-ASSISTED THERAPY; RULEMAKING**

6 The Commissioner of Health shall adopt rules relating to
7 medication-assisted therapy for opioid dependence for physicians treating
8 fewer than 30 patients, which shall include a requirement that such physicians
9 ensure that their patients are screened or assessed to determine their need for
10 counseling and that patients who are determined to need counseling or other
11 support services are referred for appropriate counseling from a licensed clinical
12 professional or for other services as needed.

13 **Sec. 15. 26 V.S.A. chapter 36, subchapter 8 is added to read:**

14 **Subchapter 8. Naloxone Hydrochloride**

15 **§ 2080. NALOXONE HYDROCHLORIDE; DISPENSING OR**

16 **FURNISHING**

17 **(a) The Board of Pharmacy shall adopt protocols for licensed pharmacists**
18 **to dispense or otherwise furnish naloxone hydrochloride to patients who do not**
19 **hold an individual prescription for naloxone hydrochloride. Such protocols**
20 **shall be consistent with rules adopted by the Commissioner of Health.**

1 (b) Notwithstanding any provision of law to the contrary, a licensed
2 pharmacist may dispense naloxone hydrochloride to any person as long as the
3 pharmacist complies with the protocols adopted pursuant to subsection (a) of
4 this section.

5 Sec. 16. 33 V.S.A. § 813 is added to read:

6 § 813. MEDICAID PARTICIPATING PROVIDERS

7 The Department of Vermont Health Access shall grant authorization to a
8 licensed alcohol and drug abuse counselor to participate as a Medicaid
9 provider to deliver clinical and case coordination services to Medicaid
10 beneficiaries, regardless of whether the counselor is a preferred provider.

11 Sec. 16a. DEPARTMENT OF CORRECTIONS AND HEALTH CARE
12 REFORM

13 (a) The Agency of Human Services and its departments shall assist the
14 Department of Corrections in fully enacting the provisions of the Affordable
15 Care Act as they pertain to persons in the criminal justice population, including
16 access to health information technology, the Blueprint for Health, Medicaid
17 enrollment, health benefit exchange, health plans, and other components under
18 the Department of Vermont Health Access that support and ensure a seamless
19 process for reentry to the community or readmission to a correctional facility.

20 (b) The Department of Corrections shall include substance abuse services
21 in its request for proposal (RFP) process for inmate health services. Through

1 the RFP, the Department shall require that substance abuse services be
2 provided to persons while incarcerated.

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

4 § 4254. IMMUNITY FROM LIABILITY

5 * * *

6 (d) A person who seeks medical assistance for a drug overdose or is the
7 subject of a good faith request for medical assistance pursuant to subsection (b)
8 or (c) of this section shall not be subject to any of the penalties for violation of
9 13 V.S.A. § 1030 (violation of a protection order), for a violation of this
10 chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose,
11 or for being within close proximity to any person at the scene of the drug
12 overdose.

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

20 * * *

1 (g) The immunity provisions of this section apply only to the use and
2 derivative use of evidence gained as a proximate result of the person's seeking
3 medical assistance for a drug overdose, being the subject of a good faith
4 request for medical assistance, being at the scene or being within close
5 proximity to any person at the scene of the drug overdose for which medical
6 assistance was sought and do not preclude prosecution of the person on the
7 basis of evidence obtained from an independent source.
8
9

10 Sec. 18. AGENCY OF HUMAN SERVICES POSITION

11 One exempt position is created within the Agency of Human Services for
12 the purpose of overseeing the implementation of the pretrial services of
13 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.

22 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE