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MEMORANDUM

To: House Judiciary, Corrections and Institutions, and Human Services Committees
From: Robert L. Sand
Date: April 21, 2014
Re: Proposed S.295 Revisions

What follows are section-by-section proposals for S.295. Thank you so much for the multiple opportunities to speak with each of your committees about these ideas. Everything that follows was shared with you last week, at least in concept form. The most significant change from the version passed by the Senate is a proposal I discussed with you to create a phased introduction of groups who would be offered a preliminary screening and assessment prior to arraignment. While the broad sweep of the Senate bill is a laudatory vision of where we should be in a few years, a more modest rollout seems prudent. I have also attached to this memo S.295 as passed by the Senate with margin notes consistent with this memo.

Section 1. LEGISLATIVE FINDINGS

Proposal:

1. (f) Import language from Section 4 about Alternative Justice Programs so that the “vision” language is all included in the initial legislative findings.
2. Add definitions of risk assessment, needs screening, and clinical assessment:
 - (g)(i) Risk Assessment. As used in this Act, risk assessment refers to a pretrial assessment that is predictive of a person’s failure to appear in court and risk of violating pretrial conditions of release with a new alleged offense.
 - (g)(ii) Needs Screening. As used in this Act, a needs screening is a triage function that determines primary and secondary needs and if there are indicators that a full clinical assessment is warranted. The screening leads to a determination of the appropriate referral to community resources or may lead to no further intervention.
 - (g)(iii) Clinical Assessment. As used in this Act, a clinical assessment is a detailed and formalized review of a person’s strengths, expressed and identified needs, and social determinants of health that lead to the development of an individual plan of care/treatment plan, including referral to community providers and resources.

Section 2. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENING

1. Since there is a sentence about the “objective” of pretrial risk assessments there should also be a parallel sentence about the objective of pretrial needs screening.

(a)...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.

2. Strike (b)(1) and (b)(2) and substitute the following language that creates four categories of offenses and a catch-all fifth group that focusses this section on people with substantial substance abuse and mental health needs.

(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. In the event the assessment or screening cannot be obtained prior to arraignment, the court shall direct them to happen as soon as practicable. Participation in the assessment and screening prior to an initial court appearance shall be voluntary. The eligible categories are as follows:

i) Misdemeanor drug offenses cited into court;

ii) Felony drug offenses cited into court;

iii) Felonies that are not listed crimes cited into court;

iv) Individuals who are arrested and lodged and unable to post bail within 24 hours of lodging but not to include people charged with a sexual crime or an offense punishable by up to life imprisonment;

v) Individuals not charged with a listed crime who are identified by law enforcement, the prosecution, the defense, probation and parole, the court, a treatment provider, or a family member or friend to have a substantial substance abuse or mental health issue.

(b)(2) Individuals who have an offense that falls into the categories above who have other pending charges or a violation of probation shall not be excluded from these categories unless their other charges or offense is a listed crime.

The Administrative Judge and the Court Administrator, in consultation with the Secretary of AHS and the Commissioner of DOC, shall develop a plan for the phased, statewide rollout of these categories under a timetable not to exceed one year.

3. Add language to make it clear that the voluntary nature of the risk assessment and needs screening does not limit the court’s authority to issue Conditions of Release to include a clinical assessment.

(b)(3) Nothing in this section shall be construed to limit the court’s authority to order a screening or assessment as a condition of release under Section 7554.

4. Change the name here and throughout to “pretrial monitor.”

5. Add language to make clear that the newly authorized conditions of release do not in any way create a new limitation on the court.

(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 limit the court in any way.

6. Add language to empower the court to develop guidelines to ensure consistent statewide judicial use of

the pretrial monitors.

The Judiciary shall develop guidelines for the appropriate use of court ordered pretrial monitoring services based upon the risk and needs of the offender.

Section 3. RISK AND NEEDS SCREENING TOOLS AND SERVICES

1. Clarify that validating of the selected tools will be an on-going process
 - (a) The Department shall begin the process of validating ~~validate~~ the selected tools for the population in Vermont.
2. Indicate that monitoring “may” include the listed activities but need not in all instances.
 - (e) Pretrial monitoring may include:
3. Indicate that included in the range of responsibilities for the monitor is supporting a prosecutor’s precharge program:
 - (e)(4) Supporting a prosecutor’s precharge program.

Section 4. ALTERNATIVES TO TRADITIONAL CRIMINAL JUSTICE MODEL

1. Rename Section as: PROSECUTOR’S PRECHARGE PROGRAM AND REPORTING
2. Move section (a) to legislative findings section.
3. Make clear that prosecutors only need to develop guidelines for prosecutor precharge programs and not all alternative justice 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.

Section 5. PRE-CHARGE PROGRAMS

1. Delete Section 5 as the role of the pretrial monitor is now contained in Section 3 and the guidelines for precharge programs are now contained in Section 4, rendering all of Section 5 superfluous.

RENUMBER SECTIONS TO ACCOUNT FOR ELIMINATION OF SECTION 5

(NEW) Section 17. EXEMPT POSITION

1. Add language creating the exempt position of statewide pretrial monitor coordinator:
One exempt position is created within the Agency of Human Services for the purpose of overseeing the implementation of Sections 1 through 16 of this act and the pretrial monitors hired under Section 3.

(RENUMBERED) Section 17. EFFECTIVE DATES

1. Make necessary adjustments to indicate changes above.
2. Of note, with the removal of Section 5 and the role of the pretrial monitors supporting prosecutor precharge programs in Section 3, the precharge programs can begin immediately, subject to the contracts with the pretrial monitors.