

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 295
3 entitled “An act relating to pretrial services, risk assessments, and criminal
4 justice programs” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * **Pretrial Services** * * *

8 Sec. 1. LEGISLATIVE FINDINGS

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

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

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

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

2 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

3 (a) The objective of a pretrial risk assessment is to provide information to
4 the Court for the purpose of determining whether a person presents a risk of
5 nonappearance or a threat to public safety, so the Court can make an
6 appropriate order concerning bail and conditions of pretrial release.

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

9 (b)(1) If a person is arrested or cited for an eligible offense, the person shall
10 be offered a risk assessment and, if appropriate, a substance abuse or mental
11 health needs screening, or both, prior to arraignment. In the event an
12 assessment or screening cannot be obtained prior to arraignment, the Court
13 shall direct the assessment and screening to be conducted as soon as
14 practicable. Participation in an assessment or screening shall be voluntary. As
15 used in this section, “eligible offense” means any offense that is not a listed
16 crime pursuant to section 5301 of this title, except that burglary into an
17 occupied dwelling pursuant to subdivision 1201(c)(3) of this title shall also
18 qualify as an eligible offense.

19 (2) Any person arrested and charged with an offense that is not
20 an eligible offense or an offense for which bail may be denied pursuant to
21 section 7553 or 7553a of this title may be offered a risk assessment and, if

1 appropriate, a substance abuse or mental health needs screening, or both, prior
2 to arraignment. In the event an assessment or screening cannot be obtained
3 prior to arraignment, the Court shall direct the assessment and screening to be
4 conducted as soon as practicable. Participation in an assessment or screening
5 shall be voluntary.

6 (c) The results of the assessment and screening shall be provided to the
7 prosecutor who, upon filing a criminal charge against the person, shall provide
8 the results to the person and his or her attorney and the Court.

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

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

12 (B) participate in a clinical assessment by a substance abuse
13 treatment provider;

14 (C) comply with any treatment recommended by the provider;

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

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

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

1 date, time, and location of the clinical assessment and advise the Court, the
2 person 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.

5 (e) Information obtained from the person during the risk assessment or
6 needs screening shall be exempt from public inspection and copying under the
7 Public Records Act and shall not be released or used for any purpose except
8 for determining bail, conditions of release, and appropriate programming for
9 the person in the pending case. The person shall retain all of his or her due
10 process rights throughout the assessment and screening process and may
11 release his or her records at his or her discretion. The Vermont Supreme Court
12 and the Department of Corrections shall adopt rules related to the custody,
13 control, and preservation of information consistent with the confidentiality
14 requirements of this section.

15 Sec. 3. RISK AND NEEDS SCREENING TOOLS AND SERVICES

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

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

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

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

12 (e) Compliance monitoring shall include:

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

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

17 (3) identifying community-based treatment, rehabilitative services, and
18 restorative justice programs.

19 (f) The Department, in consultation with the Judiciary and the Center for
20 Criminal Justice Research, shall develop and implement a system to evaluate

1 performance of the pretrial services described in this section and report to the
2 General Assembly annually on or before December 15.

3 *** * * Sequential Intercept Model and Alternative**

4 **Justice Programs * * ***

5 Sec. 4. ALTERNATIVES TO TRADITIONAL CRIMINAL JUSTICE

6 MODEL

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

1 and DUI treatment courts, suspended fine programs, and offender reentry
2 programs.

3 (b) The Department of State’s Attorneys and Sheriffs, in consultation with
4 the Judiciary and the Attorney General, shall develop broad guidelines for
5 these alternative justice programs to ensure there is probable cause and that
6 there are appropriate opportunities for victim input and restitution.

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

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

16 § 7554d. PRE-CHARGE PROGRAMS

17 (a) At the sole discretion of the prosecutor, a person who has been arrested
18 or cited may participate in a pre-charge program that addresses substance
19 abuse, mental health issues, or community-based restorative justice principles
20 consistent with a written protocol established by the prosecutor and filed with
21 the Executive Director of State’s Attorneys and Sheriffs. A person who does

1 not qualify for a pre-charge program may be eligible for other alternative
2 justice programs.

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

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

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

9 * * *

10 (7) Enter into a repayment contract with a juvenile or adult accepted into
11 a diversion program or alternative justice program and to bring a civil action to
12 enforce the contract when a diversion program has referred an individual
13 pursuant to 3 V.S.A. § 164a or an alternative justice program contract pursuant
14 to sections 7554c and 7554d of this title.

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

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

18 * * *

19 (B) A victim who is a natural person or the natural person's legal
20 representative in a case where the defendant, before or after an adjudication of
21 guilt, enters into a drug court contract or an alternative justice program contract

1 pursuant to sections 7554c and 7554d of this title requiring payment of
2 restitution.

3 *** * * Criminal Provisions * * ***

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

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

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

10 § 1201. BURGLARY

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

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

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,
7 regardless of whether someone is actually present in the building at the time of
8 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) A person convicted of burglary and who carries a dangerous or
14 deadly weapon, openly or concealed, shall be imprisoned not more than 20
15 years or fined not more than \$10,000.00, or both.

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

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

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

1 (4) A person convicted of burglary into an occupied dwelling when
2 someone is actually present in the building at the time of entry and who carries
3 a dangerous or deadly weapon, openly or concealed, or who uses or threatens
4 to use force against the occupant during the commission of the offense shall be
5 imprisoned not more than 40 years or fined not more than \$10,000.00, or both.

6 Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

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

14 *** * * Regulation of Opiates * * ***

15 Sec. 11. 18 V.S.A. § 4215 is amended to read:

16 § 4215. AUTHORIZED SALES BY PHARMACISTS

17 (a) ~~A~~ Except as provided in subsection (d) of this section, a duly licensed
18 pharmacist, in good faith and in the course of professional practice, may sell
19 and dispense regulated drugs to any person upon a written prescription or oral
20 prescription which is reduced promptly to writing by the pharmacist by an
21 individual authorized by law to prescribe and administer prescription drugs in

1 the course of professional practice. The written prescription shall be dated and
2 signed by the person prescribing or, if an oral prescription by the pharmacist
3 on the day when written, and bearing the full name and date of birth of the
4 patient for whom the drug is prescribed, and the full name of the person
5 prescribing. If the prescription is for an animal, the prescription shall state the
6 species of animal for which the drug is prescribed and the full name and
7 address of the owner of the animal. A prescription shall not be refilled unless
8 refilling is authorized by the practitioner on the original prescription or by the
9 original oral order.

10 * * *

11 (d) A pharmacist may only fill a prescription for a drug containing
12 buprenorphine if the prescription was written by a health care professional on a
13 list of approved prescribers of the drug established and maintained by the
14 Department of Health pursuant to section 4215c of this title.

15 Sec. 12. 18 V.S.A. § 4215c is added to read:

16 § 4215c. APPROVED PRESCRIBERS OF BUPRENORPHINE

17 (a) The Commissioner of Health shall establish and maintain a list of
18 approved prescribers of buprenorphine and drugs containing buprenorphine.
19 The list shall consist of the names of physicians licensed within and outside the
20 State who wish to prescribe buprenorphine to Vermont residents and meet all
21 of the following conditions:

1 (1) have received a waiver from the federal Substance Abuse and
2 Mental Health Services Administration to provide medication-assisted therapy;

3 (2) have a special identification number from the federal Drug
4 Enforcement Administration allowing the physician to prescribe
5 buprenorphine; and

6 (3) meet such other standards and conditions as the Commissioner may
7 establish by rule.

8 (b)(1) A physician who wishes to be included in the list of approved
9 prescribers shall notify the Commissioner in writing of his or her intent and
10 shall submit documentation that the physician meets the conditions specified in
11 subsection (a) of this section.

12 (2) The Commissioner shall remove from the list any physician who
13 fails to comply with the conditions specified in subsection (a) of this section.

14 (3) The Commissioner shall establish by rule a process by which a
15 physician may appeal a decision by the Commissioner to exclude the physician
16 from the approved prescriber list or to remove the physician's name from the
17 list.

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

19 The Secretary of Human Services shall adopt rules requiring all Medicaid
20 participating providers, whether licensed in or outside Vermont, to query the
21 Vermont Prescription Monitoring System (VPMS) prior to prescribing

1 buprenorphine or a drug containing buprenorphine to a Vermont Medicaid
2 beneficiary.

3 Sec. 14. MEDICATION-ASSISTED THERAPY; RULEMAKING

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

9 Sec. 15. TAMPER-RESISTANT PACKAGING; INTENT

10 It is the intent of the General Assembly to encourage manufacturers of
11 products containing buprenorphine to develop tamper-resistant packaging for
12 their products and to endeavor to create products that are effective for
13 medication-assisted therapy but do not lend themselves easily to diversion.

14 Sec. 16. PHARMACY BEST PRACTICES AND COST CONTAINMENT;
15 TABLETS AND BLISTER PACKS

16 The Commissioner of Vermont Health Access shall undertake all
17 reasonable efforts, including negotiating with pharmaceutical manufacturers
18 through the pharmacy best practices and cost containment program established
19 by 33 V.S.A. § 1998, to increase the availability and reduce the cost to the
20 State's public health benefit programs and program participants of prescribed

1 products containing buprenorphine in tablet form to be dispensed in blister
2 packs.

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

4 § 4254. IMMUNITY FROM LIABILITY

5 * * *

6 (b) A person who, in good faith and in a timely manner, seeks medical
7 assistance for someone who is experiencing a drug overdose shall not be cited,
8 arrested, or prosecuted for a violation of this chapter or cited, arrested, or
9 prosecuted for procuring, possessing, or consuming alcohol by someone under
10 age 21 years of age pursuant to 7 V.S.A §§ 656 and 657 or for providing to or
11 enabling consumption of alcohol by someone under age 21 years of age
12 pursuant to 7 V.S.A. § 658(a)-(c).

13 (c) A person who is experiencing a drug overdose and, in good faith, seeks
14 medical assistance for himself or herself or is the subject of a good faith
15 request for medical assistance shall not be cited, arrested, or prosecuted for a
16 violation of this chapter or cited, arrested, or prosecuted for procuring,
17 possessing, or consuming alcohol by someone under age 21 years of age
18 pursuant to 7 V.S.A. §§ 656 and 657 or for providing to or enabling
19 consumption of alcohol by someone under age 21 years of age pursuant to
20 7 V.S.A. § 658(a)-(c).

21 * * *

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

7 Sec. 18. EFFECTIVE DATES

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

9 (b) This section and Secs. 1 (legislative intent), 3 (risk assessment and
10 needs screening tools), 4 (alternatives to traditional criminal justice model),
11 10 (Department of Public Safety report), 12 (approved prescribers of
12 buprenorphine), 13 (VPMS query; rulemaking), 14 (medication assisted
13 therapy, rulemaking), 15 (tamper-resistant packing), 16 (buprenorphine tablets
14 and blister packs), and 17 (immunity from liability) shall take effect on
15 passage.

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

17
18 (Committee vote: 5-0-0)

19 _____
20 Senator Sears

21 FOR THE COMMITTEE