Judiciary Comments prepared by the State Court Administrator about the Proposed Treatment Court Docket Special Fund Bill
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The Judiciary is interested in actively engaging in the discussion of how to improve access to treatment for addicted individuals who become involved in the court system in the Family and Criminal Divisions. Where need is properly documented, we can support equal access to programs that are properly funded (both in manner and amount) and are operated in accordance with best practices so long as they are not unduly disruptive (either in time or money) to other Judiciary responsibilities and do not divert resources from the priorities set by the Supreme Court, such as addressing problems in the abuse and neglect docket. We look forward to working together with the Legislature and Executive Branch and others who share those interests to identify the best ways to achieve these goals.

General Observations regarding the proposed bill: A massive program involving the creation of a special docket in each superior Court unit would normally require considerably more study and input from the Supreme Court and perhaps other interested parties. The Legislature is certainly empowered to establish subordinate courts and to define their jurisdiction. Prudence generally dictates, however, that a bill to create a new statewide program for treatment court dockets in each unit would be crafted in close collaboration with the Judiciary and the Executive branch agencies involved (state's attorneys, attorney general, public defenders, DCF, and other typical participants in the treatment court dockets.)

The Supreme Court does not give advisory opinions, so I want to make clear at the outset that where my comments address the constitutionality of particular draft language, these comments are my own. These comments set forth my concerns as a lawyer about the proposed bill, and they are not a legal opinion from the Judiciary or an advisory opinion from the Supreme Court.

One of the biggest separation of powers issues under the Vermont Constitution that I noted in the draft is the concept that an agent from another branch of state government, like a state's attorney or AG or public defender, can apply "on behalf of" a Superior Court geographic unit of the unified court system for a grant. This effectively undermines an independent branch. See proposed sec. 40(b)(3). The legislature cannot constitutionally authorize an action "on behalf of" a subordinate unit of the Judiciary any more than it could authorize such a policy decision "on behalf of" the Supreme Court.

The same problem inheres in sec. 40(b)(4)(A), which purports to authorize grant applications by an agency other than the courts to create a "mobile team" with a judge included.

Some of the findings in the current draft appear are incorrect or misleading. Finding (16), to the effect that treatment court dockets will save enough money to equal the cost of a prison, is not supported. Although the closing of the Windsor facility is noted, the bill is not attempting to harvest money for this fund from the savings that result. Finding (18) is also overstated. It is true that opiate abuse is overwhelming the Family Division due to child protection cases, but it is not overwhelming the criminal docket. Treatment court dockets in the criminal division may thus draw resources away from responding to where the need is the greatest, and will not necessarily help alleviate abuse and neglect caseloads.

Thus, here a few preliminary concerns:

- Proposed Sec 40(b)(3) appears to raise serious constitutional separation-of-power concerns Additionally, only the Court Administrator can apply on behalf of the courts, and only with the approval of the Supreme Court. The Superior Court is not a legal entity for funding purposes.

- Proposed Sec 40(b)(4): There are additional costs beyond the county level, and it would be critical to have statewide management and training. A statewide system will need increased judicial resources (judges and judicial masters) and more staff, each of which needs to be approved by the Legislature.

- Section 5: The Administrative Judge / Chief Superior Judge works for the Supreme Court. Any recommendation must come from the Supreme Court. Policy standards must come from the Supreme Court.

- Section 6: If the $70 "fee" is not designed to defray administrative costs, it's unlikely to be a fee and more likely to be a tax. The people needing to access criminal records are not responsible for, nor a player in, the substance abuse problem. Normally, a fund like this would be funded by a broad-based tax.

- Language in the bill provides for an imposition of a 15% penalty if "every county does not have access" to a drug court by a specified date. What does "having access" mean? How can the legislature impose a penalty against the Judiciary in general or especially in a case where the Judiciary does not have responsibility / control for the lack of "access." These provisions may also violate separation of powers issues in the Constitution. In addition, this provision may be ineffective it if purports to bind a future Legislature, although I would defer to your opinion on that technical issues.

- While the proposed bill allows for public or private donations, this may create potential conflict issues. For example, can a prosecutor dismiss a criminal charge (related or unrelated to substance abuse) in exchange for a donation to the fund? Are there any restrictions on who may donate?