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MEMORANDUM

To: House Judiciary Committee
From: Robert L. Sand
Date: March 1, 2017
Re: H.213, Treatment Court Bill

This memo is offered to supplement testimony and respond to the memos submitted by the Court Administrator regarding H.213.

As mentioned earlier, treatment courts gained their first mention in the legislative history to Act 195, the pretrial services bill, which passed in 2014. In 2016, under a bill championed by the judiciary, the legislature created the position of Judicial Master in Act 167. The first proposed duty for the Judicial Master is to preside over treatment court dockets. Act 167 contains a sunset provision for the Judicial Masters on July 1, 2019. The legislature wanted to revisit the efficacy of the Judicial Masters, a revisiting that will have no substance if we do not hire and employ Judicial Masters. Now, in H. 213 there is a proposal for implementation of treatment courts throughout Vermont as well as a proposed sustainable revenue source. H. 213 is a natural, logical, and consistent extension of the legislature's expressed interest in treatment courts and geographic justice within Vermont. The bill sets up the framework and funding to allow more equal access to justice and to a proven model in Vermont.

The need for treatment courts is almost self-evident. Addiction is the driving force in the criminal justice system. In 2013, in an address to the New England Association of Drug Court Professionals, Chief Justice Paul Reiber stated:

“There is no question that substance abuse continues to have a devastating impact on our communities, or that it is overwhelming the criminal justice system.”

In a Seven Days article subsequent to the 2013 speech, reporter Mark Davis wrote:

As top administrator of the court system, Reiber said he is worried that failures to curb addiction have led to wave upon wave of both criminal and family court cases that have pushed the system to a breaking point. Often, he said, the Vermont judiciary takes too long to provide resolutions that don't end up fixing anything. (emphasis added)

The Court data reinforces Chief Justice Reiber's assessment. According to the Vermont Supreme Court's statistical [report](#) filed with the legislature at the start of the 2017 session, the number of pending criminal cases at the close of FY16 was larger than at any time in the previous four years. This is especially alarming as over 1,000 marijuana cases were handled as civil tickets and not counted in the criminal court statistics.

Last year, the CAO advocated for the creation of the position of Judicial Masters (H.869). That advocacy led to the passage of Act 167, an act relating to judicial organization and operations. The law empowers the Administrative Judge to appoint Judicial Masters to preside over a variety of dockets to include, in the first instances at section (a)(1), treatment courts. It is difficult to understand why the CAO would advocate for Judicial Masters and expend its time and legislative time in 2016 and then have the Vermont Supreme Court oppose the hiring of Judicial Masters for treatment courts in 2017.

Treatment courts are a cost-effective, humane, and established method of addressing addiction for high risk and high need individuals. There is no reason the benefits of treatment courts should be available exclusively to the few counties fortunate enough to have them at present. Principles of geographic justice and equal protection would suggest it is unfair to devote nearly \$1,000,000 in new grant revenue to one county's treatment court effort – as recently happened in Washington County -- while denying other similarly-sized counties the opportunity to launch programs of their own.

In response to the CAO's [memos](#), please consider the following:

1. The CAO describes H. 213 as creating a “massive” program. If these new dockets were to spring up all at once, it truly would be a massive program. Instead, a careful, incremental rollout makes far more sense.
2. The separation of powers concern is difficult to understand. No grants can be awarded under the bill unless the CAO is a co-applicant to the grant request. As such, the CAO, and by extension the Vermont Supreme Court has effective veto power over the creation of any new dockets. But, to alleviate the CAO's concern, the bill should be amended so that the Vermont Supreme Court/CAO is the lone applicant, in consultation with the other

proposed entities.

3. The CAO expresses concern that the Vermont Supreme Court, not any other entity like the Chief Superior Judge, sets policy standards. The bill should be amended consistent with that concern to ensure that treatment court policies are established and approved by the Vermont Supreme Court.
4. The CAO questions whether the proposed funding source is a tax. As currently drafted, the funding source is a surcharge. If the CAO has alternative suggestions on how to raise sustainable revenues for treatment courts those suggestions should be encouraged.
5. The CAO raises concerns about the penalty for failing to implement treatment courts statewide by a date certain. A penalty is too harsh an approach at this juncture and a report due by a date certain is a better approach.
6. The CAO raises concerns that a fund into which donations can be made would raise conflict issues. The Rules of Professional Responsibility will govern the permissibility of attorneys seeking contributions to the fund and the Code of Judicial Conduct will guide the judges.
7. In subsequent filings, the CAO proposes as an alternative to H.213, an allowance for Defendants to travel to a host treatment court. Not only does this proposal fail to recognize the transportation difficulties for participants but, though infrequent, it is a practice currently in use. The proposed alternative language does almost nothing to advance treatment courts in Vermont

As noted by Representative Morris, H.213 does not mandate a haphazard, unplanned rollout of treatment courts. It sets the stage for a careful and deliberate planning process and would allow for rollout as soon as a region and the Vermont Supreme Court were ready for implementation.

In closing, here are the words of one trial judge about her work presiding over a treatment court docket:

“Presiding over the treatment court has been the most important and rewarding work I have done in a decade and a half on the bench.”