

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 134
3 entitled “An act relating to court diversion and pretrial services” respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 3 V.S.A. § 164 is amended to read:

8 § 164. ADULT COURT DIVERSION ~~PROJECT~~ PROGRAM

9 (a) The Attorney General shall develop and administer an adult court
10 diversion ~~project program~~ in all counties. The ~~project program~~ shall be
11 operated through the juvenile diversion project ~~and shall be designed to assist~~
12 ~~adults who have been charged with a first or second misdemeanor or a first~~
13 ~~nonviolent felony~~. The Attorney General shall adopt only such rules as are
14 necessary to establish an adult court diversion ~~project program~~ for adults, in
15 compliance with this section.

16 (b) The program shall be designed for two purposes:

17 (1) To assist adults who have been charged with a first or a second
18 misdemeanor or a first nonviolent felony.

19 (2) To assist adults with substance abuse or mental health treatment
20 needs regardless of the person’s prior criminal history record. Programming
21 for these persons is intended to support access to appropriate treatment or other

1 resources with the aim of improving the person's health and reducing future
2 adverse involvement in the justice system. A person charged with a felony
3 offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible
4 under this section. [May not be necessary if **Option 2** chosen]

5 (c) ~~The adult court diversion project administered by the Attorney General~~
6 program shall encourage the development of diversion projects programs in
7 local communities through grants of financial assistance to municipalities,
8 private groups or other local organizations. The Attorney General may require
9 local financial contributions as a condition of receipt of project program grants.

10 (d) The Office of the Attorney General shall develop program outcomes
11 following the designated State of Vermont performance accountability
12 framework and, in consultation with the Department of State's Attorneys and
13 Sheriffs, the Office of the Defender General, the Center for Crime Victim
14 Services, and the Judiciary, report annually on or before December 1 to the
15 General Assembly on services provided and outcome indicators.

16 (e) All adult court diversion ~~projects~~ programs receiving financial
17 assistance from the Attorney General shall adhere to the following provisions:

18 (1) The diversion ~~project~~ program shall accept only persons against
19 whom charges have been filed and the court has found probable cause, but are
20 not yet adjudicated. The prosecuting attorney may refer a person to diversion
21 either before or after arraignment and shall notify in writing the diversion

1 program and the court of his or her intention to refer the person to diversion.

2 **OPTION 1:**The court may also refer a person to diversion at or after
3 arraignment and shall notify in writing the diversion program of its intention to
4 refer the person to diversion. **OPTION 2 (based on language in 18 V.S.A.**

5 **§ 4230):** The prosecutor shall provide a person with the opportunity to
6 participate in the Court Diversion Program unless the prosecutor states on the
7 record why a referral to the Program would not serve the ends of justice if the
8 person is charged with a misdemeanor offense that is not a listed crime as
9 defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of
10 children in violation of chapter 64 of Title 13, an offense involving violation of
11 a protection order in violation of 13 V.S.A. § 1030, or a prohibited act as
12 defined in 13 V.S.A. § 2632. If the prosecuting attorney **or the court** refers a

13 case to diversion, the prosecuting attorney may release information to the
14 victim upon a showing of legitimate need and subject to an appropriate
15 protective agreement defining the purpose for which the information is being
16 released and in all other respects maintaining the confidentiality of the
17 information; otherwise files held by the court, the prosecuting attorney, and the
18 law enforcement agency related to the charges shall be confidential and shall
19 remain confidential unless:

20 (A) the Board declines to accept the case;

21 (B) the person declines to participate in diversion;

1 (C) the Board accepts the case, but the person does not successfully
2 complete diversion;

3 (D) the prosecuting attorney recalls the referral to diversion.

4 (2) Alleged offenders shall be informed of their right to the advice and
5 assistance of private counsel or the public defender at all stages of the
6 diversion process, including the initial decision to participate, and the decision
7 to accept the adult diversion contract, so that the candidate may give informed
8 consent.

9 (3) The participant shall be informed that his or her selection of the adult
10 diversion contract is voluntary.

11 (4) Each State's Attorney, in cooperation with the Office of the Attorney
12 General and the adult court diversion project program, shall develop clear
13 criteria for deciding what types of offenses and offenders will be eligible for
14 diversion; **IF OPTION 1 CHOSEN: however, the State's Attorney shall retain**
15 **final discretion over the referral of each case for diversion.**

16 (5) All information gathered in the course of the adult diversion process
17 shall be held strictly confidential and shall not be released without the
18 participant's prior consent (except that research and reports that do not require
19 or establish the identity of individual participants are allowed).

20 (6) Information related to the present offense that is divulged during the
21 adult diversion program shall not be used ~~in the prosecutor's case~~ against the

1 person in the person's criminal or juvenile case for any purpose, including
2 impeachment or cross-examination. However, the fact of participation and
3 success, or reasons for failure may become part of the prosecutor's records.

4 (7)(A) The adult court diversion ~~project~~ program shall maintain
5 sufficient records so that the reasons for success or failure of the program in
6 particular cases and overall can be investigated by program staff. These
7 records shall include a centralized statewide filing system that will include the
8 following information about individuals who have successfully completed an
9 adult court diversion program:

- 10 (i) name and date of birth;
11 (ii) offense charged and date of offense;
12 (iii) place of residence;
13 (iv) county where diversion process took place; and
14 (v) date of completion of diversion process.

15 (B) These records shall not be available to anyone other than the
16 participant and his or her attorney, State's Attorneys, the Attorney General and
17 directors of adult court diversion projects.

18 (8) Adult court diversion ~~projects~~ programs shall be set up to respect the
19 rights of participants.

20 (9) Each participant shall pay a fee to the local adult court diversion
21 project. The amount of the fee shall be determined by project officers or

1 employees based upon the financial capabilities of the participant. The fee
2 shall not exceed \$300.00. The fee shall be a debt due from the participant, and
3 payment of such shall be required for successful completion of the program.
4 Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall
5 be retained and used solely for the purpose of the court diversion program.

6 ~~(e)~~(f) The Attorney General is authorized to accept grants and gifts for the
7 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

8 ~~(e)~~(g) Within 30 days of the two-year anniversary of a successful
9 completion of adult diversion, the court shall provide notice to all parties of
10 record of the court's intention to order the sealing of all court files and records,
11 law enforcement records other than entries in the adult court diversion
12 project's centralized filing system, fingerprints, and photographs applicable to
13 the proceeding. The court shall give the State's Attorney an opportunity for a
14 hearing to contest the sealing of the records. The court shall seal the records if
15 it finds:

16 (1) two years have elapsed since the successful completion of the adult
17 diversion program by the participant and the dismissal of the case by the
18 State's Attorney; and

19 (2) the participant has not been convicted of a subsequent felony or
20 misdemeanor during the two-year period, and no proceedings are pending
21 seeking such conviction; and

1 (3) rehabilitation of the participant has been attained to the satisfaction
2 of the court.

3 ~~(f)~~(h) Upon the entry of an order sealing such files and records under this
4 section, the proceedings in the matter under this section shall be considered
5 never to have occurred, all index references thereto shall be deleted, and the
6 participant, the court, and law enforcement officers and departments shall reply
7 to any request for information that no record exists with respect to such
8 participant inquiry in any matter. Copies of the order shall be sent to each
9 agency or official named therein.

10 ~~(g)~~(i) Inspection of the files and records included in the order may
11 thereafter be permitted by the court only upon petition by the participant who
12 is the subject of such records, and only to those persons named therein.

13 ~~(h)~~(j) The process of automatically sealing records as provided in this
14 section shall only apply to those persons who completed diversion on or after
15 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
16 apply to the court to have his or her records sealed. Sealing shall occur if the
17 requirements of subsection ~~(e)~~(g) of this section are met.

18 ~~(i)~~(k) Subject to the approval of the Attorney General, the Vermont
19 Association of Court Diversion Programs may develop and administer
20 programs to assist persons under this section charged with delinquent,
21 criminal, and civil offenses.

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

2 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

3 (a)(1) The objective of a pretrial risk assessment is to provide information
4 to the ~~Court~~ court for the purpose of determining whether a person presents a
5 risk of nonappearance ~~or a threat to public safety~~ so the ~~Court~~ court can make
6 an appropriate order concerning bail and conditions of pretrial release. The
7 assessment shall not assess victim safety or risk of lethality in domestic
8 assaults.

9 (2) The objective of a pretrial needs screening is to obtain a preliminary
10 indication of whether a person has a substantial substance abuse or mental
11 health issue that would warrant a subsequent court order for a more detailed
12 clinical assessment.

13 (3) Participation in a risk assessment or needs screening pursuant to this
14 section does not create any entitlement for the assessed or screened person.

15 (b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a person
16 ~~whose offense or status falls into any of the following categories shall be~~
17 ~~offered a risk assessment and, if deemed appropriate by the pretrial monitor, a~~
18 ~~needs screening prior to arraignment:~~

19 ~~(A) misdemeanors and felonies, excluding listed crimes and drug~~
20 ~~trafficking, cited into court; and~~

1 ~~(B) persons who are arrested and lodged and unable to post bail~~
2 ~~within 24 hours of lodging, excluding persons who are charged with an offense~~
3 ~~for which registration as a sex offender is required upon conviction pursuant to~~
4 ~~subchapter 3 of chapter 167 of this title or an offense punishable by up to life~~
5 ~~imprisonment~~ who is arrested, lodged, and unable to post bail within 24 hours
6 of lodging shall be offered a risk assessment and, if deemed appropriate by the
7 pretrial services coordinator, a needs screening prior to arraignment.

8 (2) ~~As used in this section, “listed crime” shall have the same meaning~~
9 ~~as provided in section 5301 of this title and “drug trafficking” means offenses~~
10 ~~listed as such in Title 18~~ A person charged with an offense for which
11 registration as a sex offender is required pursuant to subchapter 3 of chapter
12 167 of this title or an offense punishable by a term of life imprisonment shall
13 not be eligible under this section.

14 (3) ~~Unless ordered as a condition of release under section 7554 of this~~
15 ~~title, participation~~ Participation in risk assessment or needs screening shall be
16 voluntary and a person’s refusal to participate shall not result in any criminal
17 legal liability to the person.

18 (4) In the event an assessment or screening cannot be obtained prior to
19 arraignment, the risk assessment and needs screening shall be conducted as
20 soon as practicable.

1 (5) A person who qualifies pursuant to ~~subdivisions (1)(A)–(D)~~
2 subdivision (1) of this subsection and who has an additional pending charge or
3 a violation of probation shall not be excluded from being offered a risk
4 assessment or needs screening unless the other charge is a listed crime.

5 ~~(6)(A) The Administrative Judge and Court Administrator, in~~
6 ~~consultation with the Secretary of Human Services and the Commissioner of~~
7 ~~Corrections, shall develop a statewide plan for the phased, consistent rollout of~~
8 ~~the categories identified in subdivisions (1)(A) through (D) of this subsection,~~
9 ~~in the order in which they appear in this subsection. The Administrative Judge~~
10 ~~and Court Administrator shall present the plan to the Joint Legislative~~
11 ~~Corrections Oversight Committee on or before October 15, 2014~~ Any person
12 charged with a criminal offense, except those persons identified in subdivision
13 (b)(2) of this section, may choose to engage with a pretrial services
14 coordinator.

15 ~~(B) All persons whose offense or status falls into one of the~~
16 ~~categories shall be eligible for a risk assessment or needs screening on or after~~
17 ~~October 15, 2015. Prior to that date, a person shall not be guaranteed the offer~~
18 ~~of a risk assessment or needs screening solely because the person’s offense or~~
19 ~~status falls into one of the categories. Criminal justice professionals charged~~
20 ~~with implementation shall adhere to the plan.~~

1 (c) The results of the risk assessment and needs screening shall be provided
2 to the person and his or her attorney, the prosecutor, and the ~~Court~~ court.
3 Pretrial services coordinators may share information only within the limitations
4 of subsection (e) of this section.

5 (d)(1) At arraignment, ~~in consideration of the risk assessment and needs~~
6 ~~screening~~, the ~~Court~~ court may order ~~the~~ a person to ~~comply with~~ do the
7 following ~~conditions~~:

8 (A) meet with a pretrial ~~monitor~~ services coordinator on a schedule
9 set by the ~~Court~~ court; ~~and~~

10 (B) participate in a needs screening with a pretrial services
11 coordinator; and

12 (C) participate in a clinical assessment by a substance abuse or
13 mental health treatment provider and follow the recommendations of the
14 provider.

15 (2) The ~~Court~~ court may order the person to ~~follow the recommendation~~
16 ~~of the pretrial monitor if the person has completed a risk assessment or needs~~
17 ~~screening~~ engage in pretrial services. Pretrial services may include the pretrial
18 services coordinator:

19 (A) supporting the person in meeting conditions of release imposed
20 by the court, including the condition to appear for judicial proceedings; and

1 (B) connecting the person with community-based treatment
2 programs, rehabilitative services, recovery supports, and restorative justice
3 programs.

4 (3) If possible, the ~~Court~~ court shall set the date and time for the clinical
5 assessment at arraignment. In the alternative, the pretrial ~~monitor~~ services
6 coordinator shall coordinate the date, time, and location of the clinical
7 assessment and advise the ~~Court~~ court, the person and his or her attorney, and
8 the prosecutor.

9 (4) ~~The conditions~~ An order authorized in subdivision (1) or (2) of this
10 subsection shall be in addition to any ~~other~~ conditions of release permitted by
11 law and shall not limit the ~~Court~~ court in any way. Failure to comply with a
12 court order authorized by subdivision (1) or (2) of this subsection shall not
13 constitute a violation of section 7559 of this title.

14 (5) This section shall not be construed to limit a court's authority to
15 impose sanctions pursuant to section 7554 of this title.

16 (e)(1) Information obtained from the person during the risk assessment or
17 needs screening shall be exempt from public inspection and copying under the
18 Public Records Act and, except as provided in subdivision (2) of this
19 subsection, only may be used for determining bail, conditions of release, and
20 appropriate programming for the person in the pending case. The information
21 a pretrial services coordinator may report is limited to whether a risk

1 assessment indicates risk of nonappearance, whether further substance use
2 assessment or treatment is indicated, whether mental health assessment or
3 treatment is indicated, whether a person participated in a clinical assessment,
4 and whether further engagement with pretrial services is recommended unless
5 the person provides written permission to release additional information.
6 Information related to the present offense directly or indirectly derived from
7 the risk assessment, needs screening, or other conversation with the pretrial
8 services coordinator shall not be used against the person in the person's
9 criminal or juvenile case for any purpose, including impeachment or cross-
10 examination. However, the fact of participation or nonparticipation in risk
11 assessment or needs screening may be used in subsequent proceedings. The
12 immunity provisions of this subsection apply only to the use and derivative use
13 of information gained as a proximate result of the risk assessment ~~or~~ needs
14 screening, or other conversation with the pretrial services coordinator.

15 (2) The person shall retain all of his or her due process rights throughout
16 the risk assessment and needs screening process and may release his or her
17 records at his or her discretion.

18 (3) ~~The Vermont Supreme Court in accordance with judicial rulemaking~~
19 ~~as provided in 12 V.S.A. § 1 shall promulgate and the Department of~~
20 ~~Corrections in accordance with the Vermont Administrative Procedure Act~~
21 ~~pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody,~~

1 ~~control, and preservation of information consistent with the confidentiality~~
2 ~~requirements of this section. Emergency rules adopted prior to January 1, 2015~~
3 ~~pursuant to this section shall be considered to meet the “imminent peril”~~
4 ~~standard under 3 V.S.A. § 844(a)~~ All records of information obtained during
5 risk assessment or needs screening shall be stored in a manner making them
6 accessible only to the Director of Pretrial Services and Pretrial Service
7 Coordinators for a period of three years, after which the records shall be
8 maintained as required by sections 117 and 218 of this title and any other State
9 law. The Director of Pretrial Services shall be responsible for the destruction
10 of records when ordered by the court.

11 (f) The Attorney General’s Office shall:

12 (1) contract for or otherwise provide the pretrial services described in
13 this section, including performance of risk assessments, needs screenings, and
14 pretrial monitoring services, and

15 (2) develop pretrial services outcomes following the designated State of
16 Vermont performance accountability framework and, in consultation with the
17 Department of State’s Attorneys and Sheriffs, the Office of the Defender
18 General, the Center for Crime Victim Services, and the Judiciary, report
19 annually on or before December 1 to the General Assembly on services
20 provided and outcome indicators.

1 Sec. 3. MISDEMEANOR POSSESSION OF DRUGS; PRETRIAL
2 SERVICES

3 (a) It is the intent of the General Assembly to encourage persons cited or
4 arrested for a misdemeanor drug possession charge the opportunity to engage
5 with pretrial services, and, if appropriate, enter treatment, and that, in turn, a
6 person who complies with such conditions will be eligible for dismissal of the
7 charge.

8 (b) The Attorney General, the Defender General, and the Executive
9 Director of the Department of State's Attorneys and Sheriffs shall work
10 collaboratively to develop a specific legislative proposal to accomplish this
11 intent with an implementation date of July 1, 2018 and report to the Senate and
12 House Committees on Judiciary and on Appropriations, the Senate Committee
13 on Health and Welfare, and the House Committee on Human Services on or
14 before November 1, 2017.

15 **OPTION 3: Sec. 4. 3 V.S.A. § 164(e)(1) is amended to read:**

16 **(1) The diversion program shall accept only persons against whom**
17 **charges have been filed and the court has found probable cause, but are not yet**
18 **adjudicated. The prosecuting attorney may refer a person to diversion either**
19 **before or after arraignment and shall notify in writing the diversion program**
20 **and the court of his or her intention to refer the person to diversion. ~~The court~~**
21 **may also refer a person to diversion at or after arraignment and shall notify in**

1 ~~writing the diversion program of its intention to refer the person to diversion.~~
2 If the prosecuting attorney ~~or the court~~ refers a case to diversion, the
3 prosecuting attorney may release information to the victim upon a showing of
4 legitimate need and subject to an appropriate protective agreement defining the
5 purpose for which the information is being released and in all other respects
6 maintaining the confidentiality of the information; otherwise files held by the
7 court, the prosecuting attorney, and the law enforcement agency related to the
8 charges shall be confidential and shall remain confidential unless:

9 * * *

10 Sec. 5. EFFECTIVE DATES; **SUNSET (OPTION 3)**

11 (a) This act shall take effect on July 1, 2017.

12 (b) Section 4 of this act shall take effect on July 1, 2020.

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20 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE