

# Public Health Approach to Low-level Possession and Use of Drugs

Report Pursuant to 2017 Acts & Resolves No. 61, Sec. 6

Helena M. Gardner, Legislative Counsel  
December 15, 2017

## I. REPORT REQUIREMENT, 2017 ACTS & RESOLVES NO. 61, SEC. 6

2017 Acts and Resolves No. 61, Sec. 6 states:

(a) The Office of Legislative Council shall examine the issue of a public health approach to low-level possession and use of illicit drugs in Vermont as an alternative to the traditional criminal justice model, looking to trends both nationally and internationally, with a goal of providing policymakers a range of approaches to consider during the 2018 legislative session.

(b) The Office of Legislative Council shall report its findings to the General Assembly on or before December 15, 2017.

## II. SUMMARY

This document summarizes the following public health approaches to address low-level possession and use of illicit drugs in Vermont that are alternatives to the “traditional criminal justice model”:

- 1) Expanding the use of “deflection,” also known as pre-arrest or pre-charge diversion
- 2) Expanding Court Diversion
- 3) Expanding the use of, and improving, “drug courts”
- 4) Lowering penalties for low-level possession and use of illegal drugs through expanded defelonyization or decriminalization

Approaches (1)–(3) involve referral to—and support of—addiction treatment, and thus can be described as “public health approaches.” To constitute a “public health approach,” approach (4) could be paired with one or more of the following treatment and harm reduction measures, *most of which already are supported in Vermont* but could be expanded:

- 1) Treatment, including counseling or medication assistance or both (counseling and medication assistance used in combination is referred to as “medication assisted treatment” or “MAT”)
- 2) Distribution of Naloxone (Narcan)
- 3) Education/outreach to the public
- 4) Training law enforcement officers
- 5) Needle exchanges
- 6) Safe injection sites<sup>1</sup> (where persons can use intravenous drugs under supervision)

In addition, many jurisdictions that have legislated public health approaches as an alternative to the traditional criminal justice system have enacted one or more elements of “supporting” legislation, *some of which already have been tried in Vermont* but could be expanded:

---

<sup>1</sup> In March 2017, Chittenden County State’s Attorney Sarah George convened a commission composed of drug treatment providers, medical professionals, police, and prosecutors “to explore whether the region should open a safe injection site for heroin users.” <https://vtdigger.org/2017/03/22/states-attorney-creates-panel-to-study-safe-injection-facilities/#.Wh8MpLQ-d77> On November 29, 2017, Ms. George announced the release of a report of the commission and her support of legislation to legalize safe injection sites. See <https://vtdigger.org/2017/11/29/states-attorney-push-legalizing-heroin-injection-facilities/#.Wh9Hy02ovIU>

- Collecting data on the outcomes of new approaches, analyzing the data, reporting back on outcomes, identifying process improvements, and implementing recommended process improvements
- Appropriations for program expenses; creating positions
- Limitations on liability for persons responsible for implementing new approaches

### III. BACKGROUND

#### A. “Traditional Criminal Justice Model”

The figure on p.3, which was prepared by the U.S. Department of Justice’s Bureau of Justice Statistics, provides background on what constitutes the “traditional criminal justice model” referenced in Sec. 6 of Act 61.<sup>2</sup>

#### B. Status Quo in Vermont

##### 1) Deflection

As discussed in greater detail below, “deflection” is an umbrella term that describes a variety of pre-charge approaches aimed at stopping an individual from entering the criminal justice system who is at immediate risk—or is likely at future risk—of entering the criminal justice system due to behavioral health challenges, and instead deflecting him or her into the community human services system.<sup>3</sup>

In Vermont, the Chittenden County Rapid Intervention Community Court<sup>4</sup> (also known as “RICC”) is a “deflection” approach to a variety of crimes—not just drug use and possession. RICC is a “pre-charge diversion program” available in Chittenden County “to those arrested/cited for some non-violent offenses that appear to result from untreated addiction or mental illness.”<sup>5</sup> In RICC, “[o]ffenders are assessed, and offered community services and restorative justice programs. Those who successfully complete the program are not charged; those who fail to complete the program are arraigned....”<sup>6</sup>

Act 195 of 2014<sup>7</sup> required pretrial monitors to be made available to each State’s Attorney, but did not mandate that each county office set up a pre-charge program similar to RICC. In the absence of a mandate, some State’s Attorney Offices did set up “pre-charge” programs, whereas others continued to pursue only post-charge diversion, a topic discussed in the next section.

In addition to RICC, local law enforcement agencies in Vermont may be using one or more of the deflection approaches described in greater detail in Part IV(B)(1) below.

<sup>2</sup> Although the figure on p.3 references pre-trial diversion, this report discusses expansion of pre-trial diversion as one of the “alternatives” to the traditional criminal justice model.

<sup>3</sup> See slide 5 of [https://comm.ncsl.org/productfiles/95782872/Medication\\_Assisted\\_Treatment\\_JS.pdf](https://comm.ncsl.org/productfiles/95782872/Medication_Assisted_Treatment_JS.pdf)

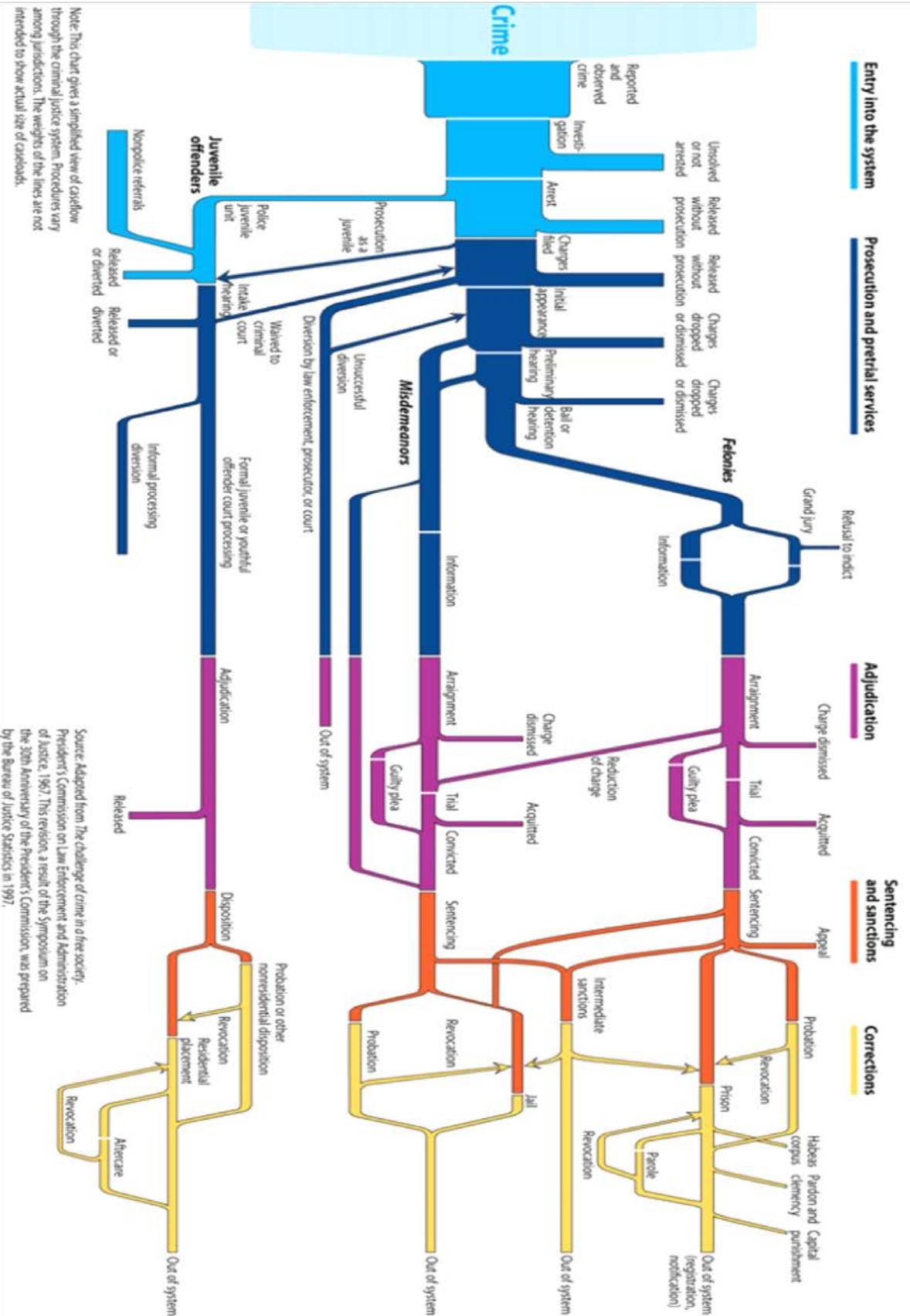
<sup>4</sup> Although the name of the program includes the term “Court,” the program does not involve court proceedings.

<sup>5</sup> <http://www.crgvt.org/news/report-chittenden-county-rapid-intervention-community-court-process-evaluation>

<sup>6</sup> *Id.*

<sup>7</sup> Act 195 (An act relating to pretrial services, risk assessments, and criminal justice programs) is available at: <http://legislature.vermont.gov/assets/Documents/2014/Docs/ACTS/ACT195/ACT195%20As%20Enacted.pdf>

# What is the sequence of events in the criminal justice system?



Source: Adapted from *The challenge of crime in a free society*, President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

## 2) Court Diversion

In Vermont, Court Diversion (Diversion) is a restorative justice program for individuals charged with a crime.<sup>8</sup> Diversion “began in the 1970’s by diverting minor offenders out of the court system to community-based programs staffed largely by volunteers”<sup>9</sup> and expanded in 1982 to be available to adults charged with certain crimes. Presently, each county in Vermont has a Diversion program run by a local organization under a grant administered by the Court Diversion and Pretrial Services Program within the Office of the Attorney General.

Through Diversion, “offenders have the opportunity to accept responsibility for their actions, to repair the harm done, and to avoid a criminal record.”<sup>10</sup> More specifically, if a person is referred to Diversion, he or she:

- “chooses whether to participate or not – participation is voluntary,
- admits responsibility for his/her actions,
- meets with a board of community volunteers and completes a contract designed to repair the harm done to the victim and the larger community, and address underlying factors in the individual’s life that contributed to the crime,
- pays a fee, and
- avoids a permanent criminal record if s/he completes the program successfully.”<sup>11</sup>

In addition, “[v]ictims’ views are heard and reflected in the contract developed by the Review Board and participant” (when there is an identifiable victim) and case managers support participants through the process.<sup>12</sup>

Effective July 1, 2017, 2017 Acts & Resolves No. 61, Sec. 2<sup>13</sup> amended 3 V.S.A. § 164 (the adult diversion statute) to make a person with substance abuse or mental health treatment needs eligible for Diversion regardless of prior criminal history record, except if the person is charged with a listed crime under 13 V.S.A. § 5301.<sup>14</sup> Prior to this change in the law, adult Diversion was available only to persons charged with a first or a second misdemeanor or a first nonviolent felony.

According to Willa Farrell, Director of Court Diversion and Pretrial Services, the population identified as having substance abuse or mental health treatment needs will be served under the new “Tamarack” program with Pretrial Service Coordinators acting as case managers. Unlike

---

<sup>8</sup> Although Diversion has expanded to include programs for civil violations of underage possession of alcohol and marijuana (YSASP) and to help people regain their driver’s license while paying fines and fees owed to the State (DLS), this report will not discuss YSASP or DLS.

<sup>9</sup> [http://www.leg.state.vt.us/jfo/appropriations/fy\\_2018/FY2018%20Department%20Budgets/FY2018%20Court%20Diversion%20-%20Budget.pdf](http://www.leg.state.vt.us/jfo/appropriations/fy_2018/FY2018%20Department%20Budgets/FY2018%20Court%20Diversion%20-%20Budget.pdf)

<sup>10</sup> [http://www.leg.state.vt.us/jfo/appropriations/fy\\_2018/FY2018%20Department%20Budgets/FY2018%20Court%20Diversion%20-%20Budget.pdf](http://www.leg.state.vt.us/jfo/appropriations/fy_2018/FY2018%20Department%20Budgets/FY2018%20Court%20Diversion%20-%20Budget.pdf)

<sup>11</sup> <http://vtcourtdiversion.org/court-diversion/>

<sup>12</sup> *Id.*

<sup>13</sup> <http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT061/ACT061%20As%20Enacted.pdf>

<sup>14</sup> The definition of “listed crime” at 13 V.S.A. § 5301 is lengthy, and is available at: <http://legislature.vermont.gov/statutes/section/13/165/05301>

“traditional” Court Diversion case managers, the activities of Pretrial Service Coordinators currently are governed under a contract from the Attorney General to Lamoille Restorative Center, which in turn contracts with other county agencies to provide statewide pretrial services.

Sec. 2 of Act 61 also amended the Adult Diversion statute to require that for “a person charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A),”<sup>15</sup> the prosecutor must provide the person the opportunity to participate in Diversion “unless the prosecutor states on the record at arraignment or a subsequent court proceeding why doing so would not serve the ends of justice in that particular case.”<sup>16</sup> However, Sec. 2 retained language of existing law stating that “the State’s Attorney shall retain final discretion over the referral of each case for diversion.”<sup>17</sup> In effect, Sec. 2 of Act 61 created a default that persons charged with a “qualifying crime” would be diverted, but prosecutors can reverse the default and not divert the person if the prosecutor makes the required statement on the record.

Further, Sec. 2 of Act 61 added a new 3 V.S.A. § 164(d) to require the Office of the Attorney General to “develop program outcomes” that follow Vermont’s performance accountability framework and report annually to the General Assembly “on services provided and outcome indicators.”

These amendments to 3 V.S.A. § 164 made in Sec. 2 of Act 61 are scheduled to sunset on July 1, 2020. According to Sec. 1(b)(3) of Act 61, “It is the intent of the General Assembly that ... consideration be given to further amending the diversion program statutes before Sec. 2 of this act sunsets on July 1, 2020, if it is determined that Sec. 2 of this act did not produce the intended increases in diversion program usage.”

### 3) Drug courts

According to the National Association of Drug Court Professionals (NADCP), an adult drug court is “[a] specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among substance abusing offenders and to increase the offender’s likelihood of successful habilitation through early, continuous, and intense

---

<sup>15</sup> 13 V.S.A. § 7601(4)(A) is a portion of the definition of “qualifying crime” used in the chapter governing expungement. In full, effective January 1, 2018, 13 V.S.A. § 7601(4) defines qualifying crime as follows:

(4) “Qualifying crime” means:

(A) a misdemeanor offense that is not:

(i) a listed crime as defined in subdivision 5301(7) of this title;  
(ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;  
(iii) an offense involving violation of a protection order in violation of section 1030 of this title;  
(iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this

title; or

(v) a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief;

(C) a violation of section 2501 of this title related to grand larceny;

(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title; or

(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit.

<sup>16</sup> Sec. 7 of Act 61 repeals (i.e., sunsets) the changes made in Sec. 2.

<sup>17</sup> See current 3 V.S.A. § 164(e)(4).

judicially supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions and other rehabilitation services.”<sup>18</sup>

In Vermont, Sec. 28 of Act 117 of 1998 authorized “creation of a special DUI-drug offenses docket” within the then district court to “promote the screening, evaluation, education, and treatment of persons who are addicted to alcohol and other drugs,” but only if the Supreme Court adopted related rules. Sec. 29 directed “the court administrator, the director of the office of alcohol and drug abuse programs, the commissioner of corrections, the director of the department of state’s attorneys and sheriffs, the defender general and the attorney general” to report on January 15, 1999 on “the advisability and feasibility of creating a special DUI-drug offense docket within the district court.”

However, it appears that the first drug court in Vermont (in Chittenden County) did not start until March 2003.<sup>19</sup>

Act 128 of 2002 established a pilot project creating “drug court initiative committees” to be located in Rutland, Chittenden, and Bennington counties. With minor changes, Act 54 of 2003 codified the pilot project. The statutory pilot language was repealed on March 1, 2007 by operation of a sunset, at which time drug courts were up and running. The former pilot language is reproduced in Appendix A.

The Vermont Judiciary website currently reports that it operates “treatment court dockets and specialty dockets” that “offer individuals with substance use disorders and mental health conditions the opportunity to enter treatment and avoid certain consequences, such as incarceration or termination of parental rights.”<sup>20</sup> Adult drug treatment dockets are available in Chittenden, Rutland, and Washington counties and a juvenile drug treatment court docket is available in Franklin County.<sup>21</sup> In its “Overview of Treatment Dockets,” the website states:

Participants must follow program rules and show up for treatment and court hearings. Each program has a team to help people stop using drugs and committing crimes. The teams use rewards for good choices and sanctions for harmful choices to help people learn how to get and stay sober and live law-abiding lives. The judge and the team help each participant pursue work, education, and other goals that will lead to a better life. Treatment dockets help people get the treatment they need and lead to safer communities at a cost savings to the state.<sup>22</sup>

Starting in 2002 and continuing through 2009, the Big Bill made specific appropriations to support drug courts. Treatment docket expenditures in 2017 (through October) and in calendar years 2014–2016, and sources of funds, are shown in Appendix B. In addition, in connection

---

<sup>18</sup> <http://www.nadcp.org/learn/what-are-drug-courts/types-drug-courts>

<sup>19</sup> “Report to the General Assembly on the Pilot Project for Drug Court Initiative Committees,” Office of the Court Administrator, January 2006, available at: <http://forms.vermontlaw.edu/criminaljustice/Rutland/IP4/DrugCourt/PilotDrugCourtInitiativeReport2006.pdf> 2003.

<sup>20</sup> See <https://www.vermontjudiciary.org/programs-and-services/treatment-and-specialty-dockets>

<sup>21</sup> *Id.* Windsor County has a DUI Treatment Docket.

<sup>22</sup> *Id.*

with testimony on H.213,<sup>23</sup> on February 7, 2017, the Court Administrator submitted to the House Committee on Judiciary a presentation entitled “Treatment Dockets in the Vermont Judiciary” that will be discussed further below and contains information about Judge Time and Staff Time spent per case, a detailed breakdown of treatment court funding by county, and the portion of treatment court funding attributable to the General Fund.<sup>24</sup>

As will be discussed in Part IV(B)(3) below, according to external evaluations of Vermont drug courts, outcomes have been mixed.

#### 4) Existing penalties for low-level possession of illicit drugs in Vermont

The table below shows existing penalties under Vermont law for low-level possession of various illicit drugs in Vermont, and also highlights in yellow text showing “cut-off” points between misdemeanor and felony<sup>25</sup> possession depending on the specific quantity of the drug possessed.

The table omits text showing increasing felony penalties based on quantity and related to possession with intent to sell or dispense (trafficking).

In addition, based on the comments of Deputy Defender General Marshall Pahl, the table below also shows language related to penalties for selling or dispensing fentanyl.<sup>26</sup> Mr. Pahl noted in particular the language of 18 V.S.A. § 4233a(a)(4), which provides that “in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug *containing a detectable amount of fentanyl* shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.” (emphasis added). Although this report addresses low-level possession and use of drugs, and not selling or dispensing, Mr. Pahl noted that the Judiciary committees may want to consider the significant enhanced penalty with regard sale or dispensing of any regulated drug containing a detectable amount of fentanyl in connection with its work on the subject of a public health approach to low-level possession and use of illicit drugs in Vermont.

Citing heroin as a specific example, Mr. Pahl also noted that the existing cutoffs shown in the table below are too low to correspond with amounts that a person who is addicted may possess for personal use.

Statute	Drug	Penalties under statute
18 V.S.A. § 4230	Marijuana <sup>27</sup>	(a) Possession and cultivation. (1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana.

<sup>23</sup> H.213, An act relating to establishing statewide access to drug and DUI treatment courts, was not voted on by the House in 2017, and was most recently referred to the Committee on Judiciary.

<sup>24</sup> <https://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Judiciary/Bills/H.213/W~Pat%20Gabel~Treatment%20Courts%20in%20the%20VT%20Judiciary%202-7-17~2-7-2017.pdf>

<sup>25</sup> In Vermont, any offense with a maximum term of imprisonment of more than two years is a felony, and any other offense is a misdemeanor. 13 V.S.A. § 1

<sup>26</sup> The fentanyl statute does not address simple possession.

<sup>27</sup> 13 V.S.A. § 4201(15) defines “marijuana.”

		<p>For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.</p> <p>(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating marijuana shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.</p> <p>(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.</p> <p>(2) A person knowingly and unlawfully possessing two ounces or more of marijuana or 10 grams or more of hashish or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.</p> <p><i>[Text of subdvs. (3)–(5) omitted]</i></p>
18 V.S.A. § 4231(a)	Cocaine <sup>28</sup>	<p>(a) Possession.</p> <p>(1) A person knowingly and unlawfully possessing cocaine shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.</p> <p>(2) A person knowingly and unlawfully possessing cocaine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.</p> <p><i>[Text of subdiv. (3) omitted]</i></p>
18 V.S.A. § 4232(a)	LSD <sup>29</sup>	<p>(a) Possession.</p> <p>(1) A person knowingly and unlawfully possessing lysergic acid diethylamide shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.</p> <p>(2) A person knowingly and unlawfully possessing lysergic acid diethylamide in an amount consisting of 100 milligrams or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.</p> <p><i>[Text of subdvs. (3) and (4) omitted]</i></p>
18 V.S.A. § 4233(a)	Heroin <sup>30</sup>	<p>(a) Possession.</p> <p>(1) A person knowingly and unlawfully possessing heroin shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.</p> <p>(2) A person knowingly and unlawfully possessing heroin in an amount consisting of 200 milligrams or more of one or more preparations, compounds, mixtures, or substances containing heroin shall be imprisoned not more than five</p>

<sup>28</sup> 13 V.S.A. § 4201(35) defines “cocaine.”

<sup>29</sup> 13 V.S.A. § 4201(37) defines “lysergic acid diethylamide” (LSD).

<sup>30</sup> 13 V.S.A. § 4201(36) defines “heroin.”

		years or fined not more than \$100,000.00, or both. <i>[Text of subdvs. (3) and (4) omitted]</i>
18 V.S.A. § 4233a	Fentanyl	(a) Selling or dispensing. (1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both. (2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both. (3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both. (4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both. <i>[Text of subsecs. (b) and (c) omitted]</i>
18 V.S.A. § 4234(a)	Depressant, stimulant, <sup>31</sup> and narcotic <sup>32</sup> drugs	(a) Possession. (1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both. (2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the board of health by rule <sup>33</sup> shall be imprisoned not more than five years or fined not more than \$25,000.00, or both. <i>[Text of subdvs. (3) and (4) omitted]</i>
18 V.S.A. § 4234a(a)	Methamphetamine <sup>34</sup>	(a) Possession. (1) A person knowingly and unlawfully possessing methamphetamine shall be imprisoned not more than one year or fined not more than \$2,000.00, or both. (2) A person knowingly and unlawfully possessing methamphetamine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine shall be imprisoned not more than five years or fined not more than \$100,000.00, or both. <i>[Text of subdiv. (3) omitted]</i>
18 V.S.A. § 4235(a) & (b)	Hallucinogenic drugs <sup>35</sup>	(a) “Dose” of a hallucinogenic drug means that minimum amount of a hallucinogenic drug, not commonly used for therapeutic purposes, which causes a substantial hallucinogenic effect. The board of health shall adopt rules which establish doses for hallucinogenic drugs. The board may incorporate, where applicable, dosage calculations or schedules, whether described as “dosage

<sup>31</sup> 13 V.S.A. § 4201(6) defines “depressant or stimulant drug” as used in 18 V.S.A. chapter 84 (possession and control of regulated drugs).

<sup>32</sup> 13 V.S.A. § 4201(16) defines “narcotic” (interchangeably with “narcotics” and “narcotic drugs”).

<sup>33</sup> Benchmark dosages are available on pp.31–33 of the “Regulated Drug Rule,” available at [http://www.healthvermont.gov/sites/default/files/documents/pdf/REG\\_regulated-drugs.pdf](http://www.healthvermont.gov/sites/default/files/documents/pdf/REG_regulated-drugs.pdf)

<sup>34</sup> 13 V.S.A. § 4201(39) defines “methamphetamine.”

<sup>35</sup> 13 V.S.A. § 4201(10) defines “hallucinogenic drugs.”

		<p>equivalencies” or otherwise, established by the federal government.</p> <p>(b) Possession.</p> <p>(1) A person knowingly and unlawfully possessing a hallucinogenic drug, other than lysergic acid diethylamide, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.</p> <p>(2) A person knowingly and unlawfully possessing 10 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.</p> <p>[Text of subdvs. (3) and (4) omitted]</p>
18 V.S.A. § 4235a(a)	Ecstasy <sup>36</sup>	<p>(a) Possession.</p> <p>(1) A person knowingly and unlawfully possessing Ecstasy shall be imprisoned not more than one year or fined not more than \$2,000.00, or both.</p> <p>(2) A person knowingly and unlawfully possessing Ecstasy in an amount consisting of two grams or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.</p> <p>[Text of subdvs. (3) and (4) omitted]</p>

#### IV. ALTERNATIVES TO THE TRADITIONAL CRIMINAL JUSTICE MODEL THAT TAKE A PUBLIC HEALTH APPROACH

##### A. “Public Health Approach”

Part IV(B) below discusses alternatives to the “traditional criminal justice model” for low-level illicit drug possession and use. As noted above, the first three involve referral to—and support of—addiction treatment, and thus can be described as “public health approaches.” To constitute a “public health approach,” the fourth approach (expanded defeloning or decriminalization) could be paired with expansion or implementation of one or more of the treatment and harm reduction measures listed above in Part II. An excellent snapshot and summary of harm reduction measures taken around the world are available in the latest version of Harm Reduction International’s report, *Global State of Harm Reduction* (2016).<sup>37</sup>

##### B. Alternative Approaches to the “Traditional Criminal Justice Model”

###### 1) “Deflection” Approaches

As previously noted, deflection describes a variety of pre-charge approaches aimed at stopping an individual from entering the criminal justice system who is at risk of entering the criminal justice system due to behavioral health challenges, and instead deflecting him or her into the community human services system.

<sup>36</sup> 18 V.S.A. § 4201(38) defines “ecstasy.”

<sup>37</sup> See overview at <https://www.hri.global/contents/1739> and report at [https://www.hri.global/files/2016/11/15/Global\\_Overview\\_2016.pdf](https://www.hri.global/files/2016/11/15/Global_Overview_2016.pdf)

At the August 2017 NCSL Legislative Summit in Boston, an expert in deflection, Jac Charlier,<sup>38</sup> described five types<sup>39</sup> of deflection, one or more of which may be undertaken at the same time within the same program or jurisdiction:

- a. **“Naloxone Plus:** Engagement with treatment as part of an overdose response or DSM-V severe<sup>40</sup> for opiates; tight integration with treatment...”<sup>41</sup>

Examples of jurisdictions that use the “Naloxone Plus” deflection approach include:

Jurisdiction	Name	Description
Maryland, Montgomery County	STEER (Stop, Triage, Engage, Educate and Rehabilitate)	<ul style="list-style-type: none"> <li>• <i>See</i> <a href="http://docs.wixstatic.com/ugd/bfe1ed_f5af4fa0a38444fab5259aad85ea6e59.pdf">http://docs.wixstatic.com/ugd/bfe1ed_f5af4fa0a38444fab5259aad85ea6e59.pdf</a></li> <li>• Launched in early 2016, with its first referral in April 2016.</li> <li>• Involves a partnership among criminal justice and behavioral health stakeholders “including the State’s Attorney, Public Defender, Corrections, Human Services, Police Department and local treatment providers.”</li> <li>• “The STEER program provides rapid identification, deflection, and access to treatment for drug-involved individuals encountered by law enforcement as an alternative to conventional arrest and booking.”</li> <li>• “A comprehensive continuum of treatment options is made available to participants, and the responsibility for outreach and treatment linkage rests on dedicated staff of a local treatment provider. STEER uses risk-need screening to assist in making the decisions about individuals who are best suited for the program. It is focused on individuals with high substance abuse treatment needs, but who tend to have a lower likelihood of risk for failure in the justice system. STEER typically begins during calls for service, community-based encounters, or crisis responses (e.g., overdose). If the responding officer believes an individual may be drug-involved, s/he can conduct a risk screen in the field (without the need to go to a district or lock-up) to determine if an individual is classified as low-moderate criminogenic risk according to the Proxy Risk Tool.”</li> </ul>
Ohio, Lucas County	DART (Drug Abuse and Response Team)	<ul style="list-style-type: none"> <li>• <i>See</i> <a href="http://www.lcsodart.com/services.htm">http://www.lcsodart.com/services.htm</a></li> <li>• Launched in July 2014, DART consists of Deputy Sheriffs, Forensic Counselors, and police officers from local jurisdictions.</li> <li>• “About” and “Services” pages describe DART’s approach: “Officers meet with overdose victims and their families, sometimes in hospital emergency rooms. D.A.R.T. officers build relationships of trust and steer addicts into effective treatment programs.” “We follow our clients &amp; families for two years as they progress through the battle with the disease, addiction.”</li> <li>• DART Unit members also volunteer their time to provide education in the community, including Narcan training.</li> </ul>

<sup>38</sup> Mr. Charlier is the National Director for Justice Initiatives, Center for Health and Justice, Treatment Alternatives for Safe Communities, Inc. His profile is at <http://www2.centerforhealthandjustice.org/leader/jac-charlier-mpa>

<sup>39</sup> *See* slide 7 of [https://comm.ncsl.org/productfiles/92221780/Handout\\_Pre-Arrest-Diversion.pdf](https://comm.ncsl.org/productfiles/92221780/Handout_Pre-Arrest-Diversion.pdf)

<sup>40</sup> *See* “Opioid Use Disorder Diagnostic Criteria,” American Psychiatric Association, at <http://pcssmat.org/wp-content/uploads/2014/02/5B-DSM-5-Opioid-Use-Disorder-Diagnostic-Criteria.pdf>

<sup>41</sup> *See* slide 7 of [https://comm.ncsl.org/productfiles/92221780/Handout\\_Pre-Arrest-Diversion.pdf](https://comm.ncsl.org/productfiles/92221780/Handout_Pre-Arrest-Diversion.pdf)

- b. **“Active Outreach:** Law enforcement intentionally IDs or seeks individuals; a warm handoff is made to treatment, which engages individuals in treatment”<sup>42</sup>

An example of a jurisdiction that uses the “Active Outreach” approach is:

Jurisdiction	Name	Description
Massachusetts, started in Gloucester	PAARI (Police Assisted Addiction and Recovery Initiative)	<ul style="list-style-type: none"> <li>• See <a href="http://paariususa.org/about-us/">http://paariususa.org/about-us/</a></li> <li>• Launched in 2015 by Gloucester, Massachusetts Police Chief Leonard Campanello, PAARI is a nonprofit that brings together police departments, “the medical community, and science-based recovery programs.”</li> <li>• Under the initiative “drug addicts who ask the police department for help will be immediately taken to a hospital and placed in a recovery program. No arrest. No jail.”</li> <li>• PAARI assists other police departments to implement similar programs.</li> <li>• PAARI also works “directly with treatment centers to secure scholarships and fully-funded in-patient programs for addicts while working with police departments, pharmacies, and families to put nasal Narcan into as many hands as possible...”</li> </ul>

- c. **“Self-Referral:** Individual initiates contact with law enforcement for a treatment referral (without fear of arrest); preferably a warm handoff to treatment”<sup>43</sup>

The PAARI program in Massachusetts described immediately above is an example of a jurisdiction that uses the “Self-Referral” approach.

- d. **“Officer Prevention Referral:** Law enforcement initiates treatment engagement; no charges are filed”<sup>44</sup>

Examples of jurisdictions that use the “Officer Prevention Referral” approach include:

Jurisdiction	Name	Description
Maryland, Montgomery County	STEER	<ul style="list-style-type: none"> <li>• See above, section IV(B)(1)(a)</li> </ul>
Washington State, King County	LEAD (Law Enforcement Assisted Diversion)	<ul style="list-style-type: none"> <li>• See <a href="http://leadkingcounty.org/">http://leadkingcounty.org/</a>; numerous articles are available at <a href="http://leadkingcounty.org/in-the-news/">http://leadkingcounty.org/in-the-news/</a></li> <li>• Launched on October 1, 2011, LEAD is a collaboration among stakeholders, including the “King County Prosecuting Attorney’s Office, the Seattle City Attorney’s Office, the Seattle Police Department, the King County Sheriff’s Office, the King County Executive, the Mayor’s Office, The Washington State Department of Corrections, The Defender Association, the ACLU of Washington, and community members.”</li> <li>• “LEAD is a pre-booking diversion program that allows officers to redirect</li> </ul>

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

		<p>low-level offenders engaged in drugs or prostitution activity to community-based services instead of jail and prosecution. LEAD participants begin working immediately with case managers to access services” including “housing, healthcare, job training, treatment and mental health support.”</p> <ul style="list-style-type: none"> <li>• LEAD Program evaluation reports are available at <a href="http://leadkingcounty.org/lead-evaluation/">http://leadkingcounty.org/lead-evaluation/</a></li> </ul>
--	--	---

- e. **“Officer Intervention Referral:** Law enforcement initiates treatment engagement; charges are held in abeyance or citations issued, with requirement for completion of treatment”<sup>45</sup>

**Examples:** The Chittenden County RICC Program described above is an example of officer intervention referral. Additional examples include:

Jurisdiction	Name	Description
Florida, Tallahassee/ Leon County	Adult Civil Citation Program, out of which the “Civil Citation Network” grew	<ul style="list-style-type: none"> <li>• See <a href="http://civilcitationnetwork.com/">http://civilcitationnetwork.com/</a><sup>46</sup> and <a href="http://civilcitationnetwork.com/docs/research/Cover%20Letter.pdf">http://civilcitationnetwork.com/docs/research/Cover%20Letter.pdf</a></li> <li>• An Adult Civil Citation Program was implemented as a pilot in Leon County, Florida in 2013<sup>47</sup>; described as “a cooperative effort between the Chief Judge, State Attorney and Public Defender for the Second Judicial Circuit; as well as the Leon County Commission and Sheriff’s Office, and the City of Tallahassee Commission and Police Department.”<sup>48</sup></li> <li>• The Program uses “pre-arrest, non-criminal citations with evidence-based assessments and appropriate intervention services as an alternative to arrest for certain first-time, misdemeanor offenses” and is described as a “public/private program that requires <i>no</i> government funding.”<sup>49</sup></li> <li>• The Civil Citation Network grew out of the pilot to provide “an avenue for information sharing and program advocacy” to enable other communities to learn about the Program. The Network is a “non-profit organization supported by a private foundation and staffed with subject matter experts in the areas of law enforcement, criminal justice, and behavioral health.”<sup>50</sup></li> <li>• The Network uses a “proprietary software platform (Civil Citation Network Application) that seamlessly blends law enforcement, clinicians and appropriate stakeholders. The software allows agencies complete management without the headaches of servers, software, paper management and dedicated IT staff.”<sup>51</sup></li> </ul>
Maryland, Montgomery County	STEER	<ul style="list-style-type: none"> <li>• See <i>above</i>, section IV(B)(1)(a)</li> </ul>

<sup>45</sup> *Id.*

<sup>46</sup> See also

<http://civilcitationnetwork.com/docs/research/Tab%201%20The%20Adult%20Civil%20Citation%20Prearrest%20Model.pdf>

<sup>47</sup> See <http://civilcitationnetwork.com/docs/research/Cover%20Letter.pdf>

<sup>48</sup> See p.6 of

<http://civilcitationnetwork.com/docs/research/Tab%2014%20Leon%20County%20Sheriff's%20Office%20Adult%20Civil%20Citation%20Program.pdf>

<sup>49</sup> See <http://civilcitationnetwork.com/docs/research/Cover%20Letter.pdf>

<sup>50</sup> *Id.*

<sup>51</sup> See <http://civilcitationnetwork.com/home.html>

Towards the end of his August 2017 NCSL Summit presentation, Mr. Charlier described a new initiative, the PTAC (Police, Treatment, and Community) Collaborative, which was founded in March 2017 at the first-ever “National Pre-Arrest Deflection Summit” held at the headquarters of the International Association of Chiefs of Police. The goals of the PTAC Collaborative are to:

- “1. Educate communities, practitioners, policy makers, police, and treatment leaders about pre-arrest diversion.
2. Equip the field with an inventory of existing programs and practices to aid in understanding and implementation of all the pre-arrest diversion models.
3. Analyze the current research to establish standard metrics of pre-arrest diversion practices that will build future collaborative research efforts.
4. Build a learning and mentoring community to support existing and new pre-arrest diversion efforts.
5. Motivate funding organizations to expand and shore up existing pre-arrest diversion efforts and to support community-based solutions for behavioral health problems.
6. Create critical principles for police and treatment models that are easy to implement.
7. Provide business models to grow behavioral health community capacity.
8. Develop a cadre of leaders able to speak and present on all aspects of pre-arrest diversion – community, behavioral health, and law enforcement; policy and practice; and research.
9. Shape and refine the varying messages for decision-makers and practitioners in order to provide clarity for communities to proceed with the pre-arrest diversion approach that best suits their needs.”<sup>52</sup>

Mr. Charlier and the PTAC collaborative could be a valuable resource for members and committees interested in learning more about deflection programs.

#### California’s LEAD Pilot Program

In addition, Sec. 17 of California’s S.B. 843 of 2016 established the Law Enforcement Assisted Diversion (LEAD) pilot program.<sup>53</sup> Under the pilot, the Board of State and Community Corrections is required to award competitive grants to up to 3 jurisdictions to establish LEAD programs and to establish minimum standards, funding schedules, and procedures for awarding grants.<sup>54</sup> Although the Board has authority to establish program standards, the Legislature also laid out certain principles, including that participation in LEAD services be voluntary and “not require abstinence from drug or alcohol use as a condition of continued participation.”<sup>55</sup>

The LEAD programs that are funded must “consist of a strategy of effective intervention for eligible participants” that includes the possibility of referral of people who may be arrested for, or who have a history of, low-level drug offenses or prostitution to social services in lieu of

<sup>52</sup> See

<http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/PTAC-Collaborative-FactSheet.pdf>

<sup>53</sup> See Cal. Penal Code §§ 1001.85–88, or Sec. 17 of S.B. 843, available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB843](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB843)

<sup>54</sup> Cal. Penal Code § 1001.86.

<sup>55</sup> Cal. Penal Code § 1001.85(b)(4).

prosecution.<sup>56</sup> Services provided to LEAD participants may include “case management, housing, medical care, mental health care, treatment for alcohol or substance use disorders, nutritional counseling and treatment, psychological counseling, employment, employment training and education, civil legal services, and system navigation.”<sup>57</sup>

The Board is required to contract with a nonprofit entity to evaluate the effectiveness of the LEAD program, and a report of the findings must be submitted to the Governor and the Legislature by January 1, 2020.<sup>58</sup> S.B. 843 appropriated \$15,000,000 for the LEAD pilot program and authorized the Board to spend up to \$550,000 of that amount for the contracts to evaluate the effectiveness of the LEAD program and to contract with experts in the implementation of LEAD in other jurisdictions in order to provide technical assistance to participating jurisdictions.<sup>59</sup>

## 2) Expanding Court Diversion

The adult Court Diversion Program in Vermont already is in the process of expanding. As described above, effective July 1, 2017, Sec. 2 of Act 61 made two significant changes to Court Diversion in Vermont by:

- Expanding eligibility to include a person “with substance abuse or mental health treatment needs regardless of the person’s prior criminal history record,” except if the person is charged with a felony offense that is a listed crime under 13 V.S.A. § 5301.<sup>60</sup> “Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person’s health and reducing future adverse involvement in the justice system.”
- Requiring that for “a person charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A),” the prosecutor must provide the person the opportunity to participate in diversion “unless the prosecutor states on the record at arraignment or a subsequent court proceeding why doing so would not serve the ends of justice in that particular case.”<sup>61</sup>

Act 61 also amended 3 V.S.A. § 164 to add a provision requiring the Office of the Attorney General to develop Diversion Program indicators and report annually to the General Assembly on or before December 1 on Diversion services provided and outcome indicators. The first report (and subsequent reports) should shed light on the effect of the above provisions and how they are being implemented, but it is probably safe to predict that the Diversion Program will change and expand significantly in the years ahead.

---

<sup>56</sup> Cal. Penal Code § 1001.87.

<sup>57</sup> Cal. Penal Code § 1001.88(a).

<sup>58</sup> Cal. Penal Code § 1001.88(b).

<sup>59</sup> See Cal. Penal Code §§ 1001.88(d).

<sup>60</sup> See 3 V.S.A. § 164(b), available at <http://legislature.vermont.gov/statutes/section/03/007/00164>. As already noted, prior to this change, prior to this expansion, only persons charged with a first or a second misdemeanor or a first nonviolent felony were eligible for Court Diversion.

<sup>61</sup> See 3 V.S.A. § 164(e)(1).

### Court Diversion in Other States

According to a “Pretrial Diversion” summary page on the website of the National Conference of State Legislators, Vermont joins 39 states that already have “diversion alternatives that address substance abuse.”<sup>62</sup>

Connecticut is an example of a nearby state with a diversion model that addresses substance abuse but differs from Vermont’s current (and still developing) approach.

Connecticut has eight pretrial diversion programs, each with different eligibility criteria and program objectives. Participants in diversion generally are placed under the supervision of the Court Support Services Division (CSSD), which is part of the Connecticut Judiciary and, among other functions, oversees pretrial services.<sup>63</sup> Two of the eight programs specifically address those charged with drug offenses or who are dependent on drugs or alcohol, and are described below.

#### *Suspended Prosecution for Drug or Alcohol Dependence Treatment Program*

With the exception of certain listed crimes and felonies, Connecticut’s Suspended Prosecution for Drug or Alcohol Dependence Treatment Program is available to a defendant if the court finds that:

- i. he or she was alcohol- or drug-dependent at the time of the crime;
- ii. he or she currently needs and would likely benefit from treatment; and
- iii. suspending prosecution advances the interests of justice.<sup>64</sup>

The program covers all drug sale and possession crimes.

To assist the court in making the above findings, the court may order the defendant (or the defendant might otherwise be required) to be examined by a clinical examiner appointed by the Commissioner of Mental Health and Addiction Services or designee to determine if he or she is dependent on alcohol or drugs.<sup>65</sup>

If the court orders suspension of prosecution, prosecution may be suspended for up to two years.<sup>66</sup> During the period of suspension, the defendant is placed in the custody of the CSSD for treatment for alcohol or drug dependency.<sup>67</sup> If the court finds that the defendant completed the treatment program, complied with all required conditions, and abstained from the use of alcohol for one year (if he or she was alcohol dependent) or abstained from the unlawful use of drugs for one year (if he or she was drug dependent), it may dismiss the charge.<sup>68</sup>

---

<sup>62</sup> <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>

<sup>63</sup> See <https://www.jud.ct.gov/CSSD/>

<sup>64</sup> See C.G.S.A. § 17a-696.

<sup>65</sup> See C.G.S.A. § 17a-693, 694, and 696.

<sup>66</sup> See C.G.S.A. § 17a-696(c).

<sup>67</sup> *Id.*

<sup>68</sup> See C.G.S.A. § 17a-697.

*Pretrial Drug Education and Community Service Program*

To be eligible for Connecticut’s Pretrial Drug Education and Community Service Program, the defendant must be charged with a drug paraphernalia or drug possession crime or possession of less than 0.5 ounce of marijuana.<sup>69</sup>

To be enrolled in the Program, a defendant applies to the court. After considering the recommendation of the prosecutor in charge of the case, the court “may, in its discretion” grant the application.<sup>70</sup> Once the court grants the application, it is required to refer the person:

- i. to CSSD for confirmation of eligibility;
- ii. a) to the Department of Mental Health and Addiction Services for evaluation and determination of an appropriate drug education or substance abuse treatment program for the first or second time an application to the Program is granted; or
  - b) to a state-licensed substance abuse treatment program for evaluation and determination of an appropriate substance abuse treatment program for the third time an application to the Program is granted.<sup>71</sup>

After confirmation of eligibility and completion of the required evaluation, the defendant is placed as follows:

- First time participants are required to complete either a 15-week drug education program or a substance abuse treatment program that has at least 15 sessions, and to do 5 days of community service.
- Second time participants are required to take part in either a 15-week drug education program or a substance abuse treatment program that has at least 15 sessions, and to do 15 days of community service.
- Third time participants are required to participate in a course of treatment ordered by the court based on the evaluation, and to do 30 days of community service.<sup>72</sup>

Defendants are responsible for program-related costs, except that the court may waive fees and costs based on “indigency or inability to pay.”<sup>73</sup>

If the defendant successfully completes the assigned drug education or substance abuse treatment program and the required community service and applies to the court for dismissal of the charges, the court “shall dismiss the charges.”<sup>74</sup>

---

<sup>69</sup> See C.G.S.A. § 54-56i(a).

<sup>70</sup> See C.G.S.A. § 54-56i(c).

<sup>71</sup> The court may refer veterans to the state or federal Department of Veterans’ Affairs for evaluation. *See id.* In addition, a defendant is not eligible to participate in the Program if he or she has twice participated previously, except that the court may grant an exception allowing participation a third time “for good cause shown.” *See* C.G.S.A. § 54-56i(b).

<sup>72</sup> C.G.S.A. § 54-56i(d)(1)(B)&(C).

<sup>73</sup> C.G.S.A. § 54-56i(g).

<sup>74</sup> C.G.S.A. § 54-56i(f).

### Court Diversion and Medication Assisted Treatment (MAT)

According to NCSL, from 2013–2016, 12 states have enacted laws addressing Medication Assisted Treatment (MAT) in diversion programs and treatment courts:

Florida: H.B. 5001 (2016)  
 Illinois: H.B. 5594 (2016)  
 Indiana: SB 464; H.B. 1304; H.B. 1448 (2015)  
 Michigan: H.B. 5294 (2016)  
 Missouri: H.B. 2012 (2016)  
 New Jersey: S.B. 2381 (2015)  
 New York: A.B. 6255 (2015)  
 Ohio: H.B. 59 (2013) and H.B. 49 (2017)  
 Tennessee: S.B. 2653 (2016)  
 Virginia: H.B. 30 (2016)  
 Wisconsin: A.B. 657 (2016)  
 West Virginia H.B. 2880 (2015)

According to NCSL, these enactments do one or more of the following:

- Appropriate funds to support MAT
- Require diversion programs and treatment courts to allow participants to engage in MAT, and prohibit them from setting conditions that disallow MAT or require discontinuation for successful program completion
- Authorize the use of MAT in established diversion and treatment court programs
- Require training for judges, prosecutors, public defenders, and others on MAT
- Require the creation of MAT pilot programs with performance and program evaluation requirements

### **3) Expanding and/or improving drug courts**

#### Background on other jurisdictions

Officials in Miami-Dade County, Florida, established the nation’s first drug court in 1989.<sup>75</sup> As of 2015, the National Association of Drug Court Professionals (NADCP) reports that over 2,900 drug courts operate in the U.S. and that 13 countries also have implemented drug courts.<sup>76</sup> According to a report of The Sentencing Project, drug court procedures can “differ dramatically” across jurisdictions; because they are designed and operated at the local level, there are “fundamental differences” among drug courts that “make cross-jurisdictional comparisons difficult.”<sup>77</sup>

<sup>75</sup> *Drug Courts: A Review of the Evidence*, The Sentencing Project (April 2009) (hereafter “Sentencing Project”), available at: <http://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf>

<sup>76</sup> See p. vi of [https://www.nadcp.org/sites/default/files/2014/Best%20Practice%20Standards%20Vol.%20II.\\_0.pdf](https://www.nadcp.org/sites/default/files/2014/Best%20Practice%20Standards%20Vol.%20II._0.pdf)

<sup>77</sup> Sentencing Project at p.2.

A 1997 report prepared by the NADCP under a grant awarded by the U.S. DOJ's Drug Courts Program Office lists and explains 10 "key components" of drug courts. The list of "key components" is reproduced in Appendix C, and each is further explained in NADCP's report.<sup>78</sup>

In 2013 and 2015 respectively, the NADCP published "Adult Drug Court Best Practice Standards, Vol. I" and "Adult Drug Court Best Practice Standards, Vol. II." According to NADCP, the standards represent "25 years of empirical study on addiction, pharmacology, behavioral health, and criminal justice" and are the "foundation upon which all adult drug courts must operate."<sup>79</sup> The list of Best Practice Standards is reproduced in Appendix D, and each is further explained in NADCP's report.

In the introduction to the 2013 publication of Vol. I of the "Best Practice Standards," the NADCP reaffirmed the ongoing relevance of the 10 "key components" of drug courts published in 1997 and the body of research that had accumulated since their publication:

"In 1996, a small group of Drug Court professionals convened to describe the key ingredients of the Drug Court model. Published early the following year, *Defining Drug Courts: The Key Components* (NADCP, 1997) [hereafter the Ten Key Components] became the core framework not only for Drug Courts but for most types of problem-solving court programs.

At the time, these farsighted practitioners had little more to go on than their instincts, personal observations, and professional experiences. The research literature was still equivocal about whether Drug Courts worked and was virtually silent on the questions of how they worked, for whom, and why. Now more than fifteen years since the Ten Key Components was published, science has caught up with professional wisdom. Research confirms that how well Drug Courts accomplish their goals depends largely on how faithfully they adhere to the Ten Key Components. Drug Courts that watered down or dropped core ingredients of the model paid dearly for their actions in terms of lower graduation rates, higher criminal recidivism, and lower cost savings. Failing to apply the Ten Key Components has been shown to reduce the effectiveness and cost-effectiveness of Drug Courts by as much as one half (Carey et al., 2012; Downey & Roman, 2010; Gutierrez & Bourgon, 2012; Shaffer, 2010; Zweig et al., 2012)."<sup>80</sup>

#### Drug courts in Vermont: performance assessments

As discussed in Part III above, adult drug treatment dockets are available in Chittenden, Rutland, and Washington counties and a juvenile drug treatment court docket is available in Franklin County.

Several studies have been conducted assessing the performance of Vermont's drug treatment courts that have resulted in reports.

<sup>78</sup> "Defining Drug Courts: The Key Components," available at: <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>

<sup>79</sup> <https://www.nadcp.org/Standards>

<sup>80</sup> <http://www.allrise.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf>, p.1

### ***2009 Report Assessing the Rutland County Adult Drug Court***

In a January 2009 report issued pursuant to a contract with the Office of the Court Administrator, NPC Research (NPC) found that the Rutland County Adult Drug Court (RCADC) was implemented as intended, reduced recidivism, and resulted in cost-savings to the taxpayer.<sup>81</sup> NPC analyzed data concerning a cohort of RCADC participants who entered the drug court program from January 1, 2004, through July 31, 2007, and a comparison group of offenders eligible for the drug court “but who received traditional court processing. Participants and comparison group members were tracked through administrative criminal justice and treatment databases for up to 36 months post drug court entry.”<sup>82</sup> The report noted that RDADC’s graduation rate of 36% was “15% below the national average,” and offered several recommendations to improve the program.<sup>83</sup>

### ***2013 Report Assessing the Washington County Treatment Court***

In January 2013, the Vermont Center for Justice Research (VCJR) submitted an “Outcome Evaluation” Report to the Court Administrator’s Office evaluating the Washington County Treatment Court (WTC).<sup>84</sup> In the study, VCJR studied the outcomes of three study groups from September 2006 (when WTC started) through March 2012: “those who successfully graduated from the WTC, those who were terminated or withdrew before completing the WTC, and those who were referred to the WTC but did not participate.”<sup>85</sup> The report characterizes the latter as a “quasi-control group” but refers to it as control group.<sup>86</sup>

The study’s conclusions include the following:

- “An analysis of the Vermont criminal records for the 64 study subjects shows that approximately 27% of successful graduates of the WTC were reconvicted of a crime as compared to 74% of the control group during the study period.”
- “The Washington Treatment Court was shown to be very effective in producing graduates that remained conviction free in the community during their first year after leaving the program. Approximately 87% of participants who completed the WTC had no arrest for any new criminal conviction within one year after program completion. The control group had a significantly lower success rate – only 52% remained conviction free within the first year.”
- “The Washington Treatment Court appears to be a promising approach for reducing the number and severity of post-WTC reconvictions for participants who completed the WTC.”
- “The control group recidivists averaged significantly more reconvictions than WTC participants, averaging 8.2 convictions per recidivist. In comparison, the recidivists

---

<sup>81</sup> “Vermont Drug Courts: Rutland County Adult Drug Court Process, Outcome, and Cost Evaluation,” available at: [https://npcresearch.com/wp-content/uploads/VT\\_Drug\\_Court\\_Eval\\_Rutland\\_Executive\\_Summary\\_01092.pdf](https://npcresearch.com/wp-content/uploads/VT_Drug_Court_Eval_Rutland_Executive_Summary_01092.pdf)

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at p.4.

<sup>84</sup> <http://forms.vermontlaw.edu/criminaljustice/Washington/IP4/DrugCourt/WCTCOutcomeEvalReport.pdf>

<sup>85</sup> *Id.* at p.1.

<sup>86</sup> *Id.*

who successfully graduated from the WTC averaged only 1.8 convictions, and the subjects who were unsuccessful in completing the WTC averaged only 2.6 convictions.”

- “The reduced recidivism rates observed for the graduates of the WTC and for the subjects who were unsuccessful in completing the WTC, compared with the control group were most likely due to the benefits of the WTC program rather than due to differences in demographic, criminal history, or the base charge characteristics of the study segments.”

### ***2013 Report Assessing the Chittenden County Treatment Court***

In a February 2013 “Outcome Evaluation” of the Chittenden County Treatment Court (CCTC) prepared by the VCJR, VCJR reported on outcomes of two population segments: (1) graduates of the CCTC, and (2) those who entered the CCTC program but did not graduate because they were terminated or withdrew.<sup>87</sup> VCJR analyzed the criminal history records of the 150 entrants into the CCTC program from January 12, 2003–May 24, 2012. Notably, the Evaluation did NOT include a comparison group who were eligible for CCTC but did not enroll.<sup>88</sup> In addition, the Evaluation employed a strict definition of “recidivism” whereby any participant convicted of crime prosecuted in a Vermont Superior Court-Criminal Division, including violations of probation and motor vehicle offenses, after program completion or termination would be considered a recidivist.”<sup>89</sup> Among other findings, the Outcome Evaluation found that:

- “People who successfully graduated from the CCTC had a recidivism rate of 46.5% compared to 53.2% for participants who were terminated or withdrew from the CCTC—this difference, however, is not significant.”
- “The success rate, or the percentage of participants who remained conviction-free for the first year after leaving the program, was 76.1% for participants who graduated from the CCTC. The terminated/withdrew study segment had [sic] similarly high success rate of 77.2%.”
- “The CCTC appears to be a promising approach for reducing the number and severity of reconvictions for participants who completed the CCTC. The reconviction rate for the successful CCTC participants was almost half the rate compared to the participants that were unsuccessful in completing the program (173 compared to 280 reconvictions per 100, respectively). CCTC graduates were also convicted of significantly fewer

---

<sup>87</sup> The Outcome Evaluation was “supported through funds provided by the Vermont Court Administrator’s Office” and is available at: [http://www.crgvt.org/uploads/5/2/2/52222091/cctc\\_final\\_report\\_2-27-2013b.pdf](http://www.crgvt.org/uploads/5/2/2/52222091/cctc_final_report_2-27-2013b.pdf)

<sup>88</sup> In a paragraph describing Study Limitations, VCJR notes: “Throughout this report the study cohort has been divided into two groups --“Graduated” and “Terminated or Withdrew.” The purpose of dividing the study cohort in this way was to show the difference in the post-program behavior between the two groups. It is important to note, however, that the “Terminated or Withdrew” group is not a true control or comparison group as found in experimental or quasi-experimental research designs. The key difference is that unlike in an experimental design, the “Terminated or Withdrew” group did participate at some level in the CCTC program and possibly were affected by that experience. The recidivism pattern of the “Terminated or Withdrew” group is likely to be different from a true control group whose members would not be exposed to the services provided by the CCTC program.” *Id.* at p.35.

<sup>89</sup> *Id.* at p.3.

violent crimes, committing only two assault crimes versus 25 assault convictions for the subjects who did not complete the CCTC.”

### ***2017 Report Assessing the Chittenden County Treatment Court***

In March 2017, NPC issued a report pursuant to a contract with the Office of the Court Administrator to provide an updated process evaluation of the CCTC, along with an outcome and cost study. This final report is not available online, but legislative counsel obtained a copy of it from the Court Administrator’s Office and it is available on file at the Office. Prior to release of this final report, in connection with February 7, 2017 testimony on H. 213,<sup>90</sup> the Court Administrator had submitted a December 2016 “draft” version of the report to the House Judiciary Committee.<sup>91</sup>

For the outcome study, NPC included all participants who entered the CCTC program since its inception in 2003 through 2014 and identified a “comparison group” of individuals eligible for the CCTC but who received traditional court processing for their charge.<sup>92</sup> The draft and final reports described several “negative” results including:

“Specifically, drug court participants had a significantly higher number of rearrests for all types of arrests, compared to the comparison group 2 and 3 years after program entry even after controlling for sex, age, race, and criminal history. Drug court graduates had fewer rearrests than all CCTC court participants but similar to the comparison group 1, 2, and 3 years after program entry.”<sup>93</sup>

Given these results, not surprisingly, costs associated with CCTC participants exceeded that of the comparison group.<sup>94</sup> The draft and final reports include a list of “commendations” listing many best practices that CCTC follows,<sup>95</sup> but also recommend numerous process changes “to improve participant outcomes and decrease associated costs.”<sup>96</sup>

The final report added content not in the draft report that put the above findings in the context of subsequent developments:

“However, these findings do not reflect the substantial changes that the court has implemented more recently to align their practices with those associated with research evidence. This data for this outcome study was collected in 2016 and examined the recidivism and cost outcomes over two years from program entry for participants who entered the program through 2014. Any participants who entered the program in 2015

---

<sup>90</sup> H.213, “an act relating to establishing statewide access to drug and DUI treatment courts,” was not voted on by the House in 2017.

<sup>91</sup> <http://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Judiciary/Bills/H.213/W~Pat%20Gabel~Chittenden%20County%20Treatment%20Court%20-%20Evaluation%20Report%20DRAFT~2-7-2017.pdf>.

<sup>92</sup> Draft report at p.15; final report at p. 18.

<sup>93</sup> Draft report at pp.1–2; final report at p. 2.

<sup>94</sup> Draft report at p.2; final report at p. 2.

<sup>95</sup> Draft report at pp. 6–9, final report at pp. 7–10.

<sup>96</sup> Draft report at pp.2–3, 9–14, and 55–56; final report at pp.2–4, 10–15, and 58–61.

and later would not have two full years of outcomes at the time of the study and therefore were not represented in these findings.”<sup>97</sup>

In addition, as compared to the draft report, the final report added a detailed timeline listing NPC’s recommendations and changes that CCTC has made based on the recommendations.<sup>98</sup>

According to NPC, “Research demonstrates that drug courts that have performed monitoring and evaluation and made changes based on the feedback have significantly better outcomes, including twice the reduction in recidivism rates and over twice the cost savings.”<sup>99</sup>

### Research outside Vermont

Drug courts have been studied extensively in the last few decades. The information below is not an exhaustive summary of the research, but instead attempts to highlight key findings of a meta-analysis conducted by a nonpartisan federal government entity, the U.S. Government Accountability Office (GAO).

By way of background, the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice administers the Adult Drug Court Discretionary Grant Program, which provides financial and technical assistance to develop and implement adult drug court programs. Grantees must collect and provide data that measure their performance. In December 2011, the GAO assessed “performance data DOJ collected in fiscal year 2010 and reviewed evaluations of 32 drug court programs and 11 cost-benefit studies issued from February 2004 through March 2011.”<sup>100</sup> In its summary, GAO stated:

“In the evaluations that GAO reviewed, drug-court program participation was generally associated with lower recidivism. GAO’s analysis of evaluations reporting recidivism data for 32 programs showed that drug-court program participants were generally less likely to be re-arrested than comparison group members drawn from criminal court, with differences in likelihood reported to be statistically significant for 18 of the programs. Cost-benefit analyses showed mixed results.”<sup>101</sup>

### Expanding drug courts in Vermont

Implementing drug courts in accordance with numerous and evolving best practices is a complex endeavor.

If the General Assembly wishes to take further action with respect to drug courts, its options include:

---

<sup>97</sup> Final report at p.58 (March 2017).

<sup>98</sup> *Id.* at pp. 58–61.

<sup>99</sup> *Id.* at p.5 (NPC’s draft report cites numerous studies).

<sup>100</sup> “Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts,” United States Government Accountability Office (December 2011), available at: <http://www.gao.gov/assets/590/586793.pdf>

<sup>101</sup> *Id.*

- Further data collection and evaluations of Vermont’s existing drug treatment courts.
- Supporting the implementation of process improvements in Vermont’s existing drug treatment courts in accordance with evaluation findings and current best practices.
- Further analysis of which drug courts across the country have been most effective, and why.
- Supporting the expansion of drug treatment courts into other counties.

As noted above, on February 7, 2017, the Court Administrator submitted to the House Committee on Judiciary a presentation entitled “Treatment Dockets in the Vermont Judiciary”<sup>102</sup> in connection with testimony on H.213.<sup>103</sup> This document estimates costs that would be associated with creating a statewide system of treatment dockets. On November 28, 2017, the Court Administrator sent legislative counsel an updated version of this document, which is on file with the Office of Legislative Council.

#### 4) Lowering penalties for low-level possession and use of illegal drugs

This section of the report will first summarize actions taken in other U.S. jurisdictions to reduce from felonies to misdemeanors (“defelonize”) certain non-marijuana low-level drug offenses, and then summarize decriminalization measures taken outside the U.S.

##### a) *Defelonization*

According to a July 30, 2016 NCSL summary, from 2011–2016, nine U.S. states reduced some drug possession crimes from a felony to a misdemeanor.<sup>104</sup> More recently:

- On November 8, 2016, the voters of Oklahoma approved a ballot initiative, “State Question No. 780” (SQ 780), with 795,475 voting yes and 619,580 voting against.<sup>105</sup> Among other provisions, SQ 780 reduced the penalty for simple drug possession to be a misdemeanor punishable by up to one year’s imprisonment and a fine of not more than \$1,000, thereby eliminating a complex schedule of penalties for simple possession that had included felony penalties, mandatory minimums for repeat offenses, and enhanced penalties for violations within 1,000 feet of schools, recreation centers, and parks. The new, one sentence misdemeanor penalty provision applies to simple possession offenses regardless of the location of the offense or the number of offenses.<sup>106</sup> SQ 780 took effect July 1, 2017. Also on November 8, 2016, Oklahoma voters approved a companion ballot initiative, State Question No. 781, which created a “County Community Safety Investment Fund” to consist of savings resulting from reclassifying as misdemeanors drug possession and certain property crimes as provided in SQ 780. Fund monies “must be

<sup>102</sup><https://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Judiciary/Bills/H.213/W~Pat%20Gabel~Treatment%20Courts%20in%20the%20VT%20Judiciary%202-7-17~2-7-2017.pdf>

<sup>103</sup> H.213, An act relating to establishing statewide access to drug and DUI treatment courts, was not voted on by the House in 2017, and was most recently referred to the Committee on Judiciary.

<sup>104</sup> See <http://www.ncsl.org/research/civil-and-criminal-justice/drug-sentencing-trends.aspx>

<sup>105</sup> <https://www.sos.ok.gov/gov/questions.aspx>

<sup>106</sup> Okla. Stat. Ann. tit. 63, § 2-402.

distributed to counties for the purpose of funding rehabilitative programs, such as mental health and substance abuse treatment programs.”<sup>107</sup>

- Oregon’s governor signed a limited defeloning law in summer 2017. Despite the publicity surrounding enactment of this law, Oregon’s drug possession laws remain in most respects more strict than Vermont’s.<sup>108</sup>

As shown in the table in Part III(B)(4) above, Vermont already punishes as a misdemeanor drug possession offenses if the defendant possesses less than a specified quantity of various drugs. Other states, including Connecticut and Oklahoma, have gone further, defeloning possession of any quantity of illicit drugs (although Connecticut and Oklahoma have retained felony penalties for possession with intent to sell or distribute<sup>109</sup>).

### Connecticut

During its June 2015 Special Session, the Connecticut General Assembly passed H.B 7104, which became Act 15-2.<sup>110</sup> Act 15-2 replaced the prior penalty structure for drug possession crimes that punished possession of most illegal drugs as felonies with a new structure that punishes possession of *any* amount of an illegal drug as a class A misdemeanor<sup>111</sup> (except that possession of less than one-half an ounce of a cannabis-type substance is a civil offense).

Under Act 15-2, a court may suspend prosecution for a second possession offense if the person is drug dependent and the court orders substance abuse treatment, and sentence a third-time or subsequent offender as a persistent controlled substance possession offender, which is punishable as a class E felony.<sup>112</sup>

Prior to these changes, Connecticut punished drug possession as follows:

Possession Crime	Penalties under Prior Law
Narcotics (i.e., heroin, cocaine, and crack)	<p>First offense: up to seven-year prison term, up to \$50,000 fine, or both</p> <p>Second offense: up to 15-year prison term, up to \$100,000 fine, or both</p> <p>Subsequent offenses: up to 25-year prison term, up to \$250,000 fine, or both</p> <p>Alternative sentence: up to three-year indeterminate prison</p>

<sup>107</sup> <https://www.sos.ok.gov/gov/questions.aspx>

<sup>108</sup> See Appendix E for a summary of Oregon’s August 2017 defeloning law.

<sup>109</sup> See C.G.S.A. § 21a-277 (penalty for illegal manufacture, distribution, sale, prescription, dispensing) and 63 Okl.St. Ann. § 2-401.

<sup>110</sup> For the act as passed, see <https://www.cga.ct.gov/2015/ACT/PA/2015PA-00002-R00HB-07104SS1-PA.htm>

<sup>111</sup> Under Connecticut law, a class A misdemeanor is punishable by a maximum term of imprisonment of 1 year or a fine of not more than \$2,000, or both. C.G.S.A. §§ 53a-36, 53a-42.

<sup>112</sup> A class E felony is punishable by a maximum term of imprisonment of not more than three years or a fine of not more than \$3,500, or both. C.G.S.A. §§ 53a-35a, 53a-41.

	term with conditional release by DOC Commissioner
Four ounces or more of marijuana or any quantity of other hallucinogens	<p>First offense: class D felony [imprisonment for a term of not more than five years or a fine of not more than \$5,000, or both]</p> <p>Subsequent offenses: class C felony [imprisonment for a term not less than one year nor more than ten years or a fine of not more than \$10,000, or both]</p> <p>Alternative sentence: up to three-year indeterminate prison term with conditional release by DOC Commissioner</p>
Any other illegal drug or at least a one-half ounce but less than four ounces of marijuana	<p>First offense: up to one-year prison term, up to \$1,000 fine, or both</p> <p>Subsequent offenses: class D felony [imprisonment for a term of not more than five years or a fine of not more than \$5,000, or both]</p> <p>Alternative sentence for subsequent offenses only: up to three-year indeterminate prison term with conditional release by DOC Commissioner</p>

Source: <https://www.cga.ct.gov/2015/SUM/2015SUM00002-R01HB-07104-SUM.htm>

Act 15-2 also addressed collateral consequences of drug possession convictions. By reducing the penalty from a felony to a misdemeanor, a person convicted of drug possession no longer loses his or her right to vote or to hold office while incarcerated or on parole, no longer is disqualified from jury service for seven years, and no longer has a felony conviction considered as a factor in denying, suspending, or revoking certain state-issued professional licenses and credentials, such as those for many health care providers, professional bondsmen, and electricians.

However, Act 15-2 did not change certain other collateral consequences, including allowing the Police Officer Standards and Training Council (POST) to cancel or revoke a POST-certified officer's certificate and making a person ineligible for a state permit to carry a pistol or revolver or an eligibility certificate for a pistol, revolver, or long gun. "The act also does not affect the authority of the appropriate commissioner, based on a drug possession conviction, to refuse to issue, suspend, or revoke a family day care home license, an approval for a family day care home staff member, a bail enforcement agent license, or a surety bail bond agent license."<sup>113</sup>

By reducing the penalty for drug possession crimes to a class A misdemeanor (except for those punished as persistent offenders), "the act no longer allows a juvenile charged with one of these crimes to be tried in adult court and sentenced as an adult."<sup>114</sup>

<sup>113</sup> <https://www.cga.ct.gov/2015/SUM/2015SUM00002-R01HB-07104-SUM.htm>

<sup>114</sup> *Id.*

b) *Decriminalization*

No U.S. state has taken the step of decriminalizing illicit drugs other than marijuana. The table that follows summarizes decriminalization measures taken in other countries and related public health initiatives.

Country	Year	Brief Description	Additional Details
Portugal	2001	<ul style="list-style-type: none"> <li>• Decriminalized possession of small quantities of all drugs for personal use—including marijuana, cocaine, and heroin</li> <li>• The law did not legalize drug possession, which is still prohibited as an administrative offense</li> </ul>	<p>A. <u>Details about the law itself</u></p> <ul style="list-style-type: none"> <li>• “Decriminalization” applies to the purchase, possession, and consumption of all drugs for personal use (defined as the average individual quantity sufficient for 10 days’ usage for one person).<sup>115</sup></li> <li>• The law established “Commissions for Dissuasions of Drug Addiction” as the bodies with sole authority to adjudicate administrative drug offenses and impose sanctions, if any.<sup>116</sup> The Dissuasion Commissions are composed of “one official from the legal arena and two from the health or social service arenas” and have authority to “determine whether and to what extent the person is addicted to drugs.”<sup>117</sup></li> <li>• While the Dissuasion Commissions are not authorized to mandate treatment, they can make suspension of sanctions conditioned on the offender’s seeking treatment. Part of the law directs the Commissions to “provisionally suspend proceedings”—meaning to impose no sanction—where an alleged offender with no prior offenses is found to be an addict but “agrees to undergo treatment.”<sup>118</sup></li> <li>• Another provision vests the commissions with discretion to “provisionally suspend proceedings” even for an addict who has a prior record, provided he or she agrees to undergo treatment. Alternatively, under Article 14, a commission, in the case of an addict with a prior record, can impose sanctions but then immediately suspend them contingent on ongoing treatment. In the event that treatment is completed and there is no subsequent offense,</li> </ul>

<sup>115</sup> Cato Institute, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies* (2009) (hereafter, “Cato”) at p.2, available at [https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald\\_whitepaper.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf)

<sup>116</sup> *Id.* at p.3.

<sup>117</sup> Drug Policy Alliance, *Drug Decriminalization in Portugal: A Health-Centered Approach* at p.1 (February 2015) (hereafter, “DPP”) available at

[https://www.drugpolicy.org/sites/default/files/DPA\\_Fact\\_Sheet\\_Portugal\\_Decriminalization\\_Feb2015.pdf](https://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf)

<sup>118</sup> Cato at p. 3.

Portugal cont...			<p>the proceeding will be deemed closed after a specified time period.”<sup>119</sup></p> <p><u>B. Details about Portugal’s Harm Reduction and Treatment Strategies</u></p> <ul style="list-style-type: none"> <li>• Prior to the 2001 decriminalization law, “the Portuguese government carried out intervention activities on a small scale based on risk reduction, but these efforts conflicted with the law and provided users with short-term aid only. The first support centers, which were not used by large numbers of people, aimed to provide users with information about treatment (although treatment was not easily available for many users).<sup>120</sup></li> <li>• When the 2001 law took effect, “risk and harm reduction activity became systemic”: <ul style="list-style-type: none"> <li>➤ Portugal’s Institute on Drugs and Drug Addiction (IDT) “now funds 69 projects throughout the country, along with 30 teams of social workers who work in the streets and in centers that provide methadone for people dependent on heroin and night shelters for homeless drug users.”<sup>121</sup></li> <li>➤ These 2–3 member teams tour places where drug users gather on a daily basis and give out small kits to drug users. These kits include “clean syringes and needles for heroin-injecting users” as well as “hygiene agents, such as distilled water, gauze, and a condom. In order to get a new kit, users have to give back used syringes and needles....”<sup>122</sup></li> <li>➤ These teams also “talk with drug users about their history of dependence and inform them about treatment possibilities; mediate with treatment centers; and, help engage the professional psychological and medical help needed to address the problems that have prompted the drug use. Heroin users are also informed about the option of exchanging heroin for methadone that can be obtained for free in special centers.”<sup>123</sup></li> <li>➤ A 2012 study found that between “1998 and 2011, the number of people in drug treatment increased by more than 60 percent (from approximately 23,600 to roughly 38,000).<sup>124</sup> Further, a 2013 study found that “[o]ver 70 percent of those who seek treatment receive opioid-</li> </ul> </li> </ul>
---------------------	--	--	--

<sup>119</sup> *Id.*

<sup>120</sup> Artur Domoslawski, Open Society Foundations, *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, trans. Hanna Siemaszko (June 2011), at p. 32 (hereafter, “Open Society”) available at: <https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf>

<sup>121</sup> Open Society at pp.32–33.

<sup>122</sup> *Id.* at p.33.

<sup>123</sup> *Id.*

<sup>124</sup> DPP at p.2, n.17.

Portugal cont...			<p>substitution therapy, the most effective treatment for opioid dependence.”<sup>125</sup></p> <p>C. <u>Details about the effect of the law</u></p> <ul style="list-style-type: none"> <li>• Studies showing the effects of the law up through 2006 showed that treatment increased substantially, the percent of drug users among newly HIV-positive individuals declined, drug-related mortality declined, and drug usage in many categories “decreased when measured in absolute terms, whereas usage in other categories has increased only slightly or mildly.”<sup>126</sup></li> <li>• These early findings have held up over time. Specifically: <ul style="list-style-type: none"> <li>➤ A 2011 study concluded that adolescent drug use and use by people deemed to be dependent or who inject has decreased since 2003.<sup>127</sup></li> <li>➤ A 2013 report based on 2012 data found that rates of drug use in the past year had not changed significantly or had actually declined since 2001.<sup>128</sup> The same 2013 report found Portugal’s drug use rates to be below the E.U. average and a 2012 study found Portugal’s rates to be far lower than those in the U.S.<sup>129</sup></li> <li>➤ 2012 and 2014 studies found that “the number of people arrested and sent to criminal courts for drug offenses declined by more than 60 percent since decriminalization.”<sup>130</sup></li> <li>➤ A 2013 study found that “[b]etween 2000 and 2013, new HIV cases among people who use drugs declined from 1,575 to 78” and the “number of new AIDS cases declined from 626 to 74.”<sup>131</sup></li> <li>➤ A 2013 study found that the “number of deaths caused by drug overdose decreased from about 80 in 2001 to just 16 in 2012.”<sup>132</sup></li> </ul> </li> </ul>
Uruguay	1974; 1999; 2004; 2013	<ul style="list-style-type: none"> <li>• 1974: Law decree declared exemption from punishment for possession of illicit drugs for personal</li> </ul>	<ul style="list-style-type: none"> <li>• 1974: Law decree No. 14.294, Art. 31 stated: “Whoever is in possession of a minimal quantity [of drugs], destined for personal consumption, will be exempted from punishment.”<sup>133</sup> What constitutes a “minimum quantity” was not defined,</li> </ul>

<sup>125</sup> *Id.* at p.2, n.18.

<sup>126</sup> Cato at 11, 15–17.

<sup>127</sup> DPP at p.1, n.7.

<sup>128</sup> *Id.* at p.1, n.3.

<sup>129</sup> *Id.* at p.1, n.4, 5.

<sup>130</sup> *Id.* at p.2, n.10.

<sup>131</sup> *Id.* at p.2, n.19.

<sup>132</sup> *Id.* at p.2, n.20.

<sup>133</sup> *See Drug Law Reform Trend in Latin America*, Transnational Institute (2009) (hereafter, “TNI”), available at [https://www.tni.org/files/article-downloads/country\\_overview\\_drug\\_laws\\_final.pdf](https://www.tni.org/files/article-downloads/country_overview_drug_laws_final.pdf)

Uruguay cont...		<p>use</p> <ul style="list-style-type: none"> <li>• 1999: Reduced mandatory minimum sentences for production and sale; authorized low-risk offenders to serve terms in rehabilitation centers; and changed personal use standard</li> <li>• 2004: Enacted measures to provide injectable drug users with easier access to clean needles</li> <li>• Dec. 2013: Legalized purchase of up to 40 grams of cannabis per month; growing of up to 6 flowering cannabis plants (requires registration); cannabis clubs</li> </ul>	<p>leaving it to the judge’s discretion to determine whether a drug was meant for personal use.<sup>134</sup> The law kept in place prohibition on production or sale of illicit drugs (with sentences ranging from 3–15 years).<sup>135</sup></p> <ul style="list-style-type: none"> <li>• The 1999 law changed the “minimum quantity” standard to: “Whoever is in possession of a reasonable quantity exclusively destined for personal consumption—as morally determined by the Judge, who would have to include his reasoning for such ruling in the sentence— will be exempted from punishment.”<sup>136</sup></li> <li>• The 2013 law “orders the public health system to prevent and treat problematic cannabis use, and commits the national education system to developing a new strategy to inform schoolchildren of the harms of using the drug.”<sup>137</sup></li> </ul>
--------------------	--	---	---

<sup>134</sup> *Id.* at 1, *see also Uruguay’s Drug Policy: Major Innovations, Major Challenges*, Brookings Institution (2016) hereafter, “Brookings”) at p.3, available at <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>

<sup>135</sup> Brookings at pp. 2–3.

<sup>136</sup> TNI at p.1.

<sup>137</sup> *Id.* at pp.9–10.

## APPENDIX A: VERMONT'S FORMER DRUG COURT PILOT STATUTE

**Source:** 2003 Acts & Resolves No. 54, Sec. 11, available at:  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2004/acts/ACT054.htm>

### 18 V.S.A. § 4251. PILOT PROJECT FOR DRUG COURT INITIATIVE COMMITTEES

(a) Establishment. A pilot project creating drug court initiative committees is established for the purpose of developing an approach to provide accountability, assessment, and suitable services for persons who have been charged with committing a crime or a delinquent act and who have a substance abuse problem. Such an approach shall be applicable to defendants of any age, but there shall be an emphasis on providing coordinated services for youth under the age of 21. Committees shall be located in Chittenden, Rutland, and Bennington counties, and the court administrator may select up to three additional counties to participate in the project.

(b)(1) Committee composition. Each committee shall be composed of the following persons:

- (A) a district court judge presiding in such county, appointed by the administrative judge;
- (B) the family court judge presiding in such county, if the family court judge is different from the district court judge;
- (C) a representative from the district office of the department of corrections appointed by the commissioner of corrections;
- (D) the state's attorney;
- (E) a representative appointed by the defender general from the district office of the office of the defender general, or in counties not served by a district office, an attorney under contract with the office of the defender general to perform legal services for the indigent;
- (F) a representative from the district office of the department of social and rehabilitation services;
- (G) a representative from the office of alcohol and drug abuse programs;
- (H) two representatives from local substance abuse provider organizations, family counseling service organizations, or any other appropriate service providers, appointed by the office of alcohol and drug abuse programs; and
- (I) two at-large members of the community, who shall be selected pursuant to subdivision (2) of this subsection.

(2) At the first meeting of each committee, the designated members shall select, by majority vote, two at-large members of the community to participate as members of the committee.

(c) Committee chair. Each committee shall be convened and chaired by the district court judge.

(d) Consultation with treatment organizations. Each committee shall consult with local substance abuse provider organizations, family counseling service organizations, and any other appropriate service providers to share information and develop essential communication and coordination between the criminal and juvenile justice systems and the treatment community.

(e) Report. On or before January 15 each year, the court administrator shall report to the general assembly on the progress and outcomes of each committee on achieving the goals of the pilot project.

(f) Sunset. This section shall sunset on March 1, 2007.

## APPENDIX B: TREATMENT DOCKET EXPENDITURES

### Abbreviations used in tables:

- ADAP is the Division of Alcohol & Drug Abuse Programs with Vermont’s Department of Health
- GHSP is Vermont’s Governor’s Highway Safety Program.
- Samhsa is the “Substance Abuse and Mental Health Services Administration,” an agency within the U.S. Department of Health and Human Services with the mission of reducing “the impact of substance abuse and mental illness on America’s communities.”<sup>138</sup>

*Source:* Vermont Court Administrator, November 20, 2017

### 2017 (Jan – OCT)

Docket(s)	Funder	Expensed
Chittenden, <sup>139</sup> Franklin, Rutland, Washington	ADAP	\$ 214,745.29
Windsor	GHSP DUI	\$ 168,888.72
Washington	Samhsa	\$ 202,246.70
	<b>Total for January – October 2017</b>	<b>\$ 585,880.71</b>

### 2016 (Jan – Dec)

Docket(s)	Funder	Expensed
Chittenden, Franklin, Rutland, Washington	ADAP	\$ 131,719.53
Franklin	Franklin Juvenile Drug Ct	\$ 1,353.42
Windsor	GHSP DUI	\$ 150,950.60
Chittenden	Samhsa	\$ 273,469.95
Chittenden	BJA Joint	\$ 191,032.47
	<b>TOTAL for calendar year 2016</b>	<b>\$ 748,545.97</b>

<sup>138</sup> <https://www.samhsa.gov/about-us>

<sup>139</sup> Chittenden includes adult drug treatment and mental health dockets

**2015 (Jan – Dec)**

<b>Docket(s)</b>	<b>Funder</b>	<b>Expensed</b>
Chittenden, Franklin, Rutland, Washington	ADAP	\$ 127,336.32
Franklin	JABG	\$ 14,509.64
Windsor	DPS DUI	\$ 161,466.11
Windsor	GHSP DUI	\$ 9,727.06
Chittenden	SAMHSA	\$ 146,086.35
Chittenden	BJA	\$ 47,149.42
	<b>TOTAL for Calendar Year 2015</b>	<b>\$ 506,274.90</b>

**2014 (Jan – Dec)**

<b>Docket(s)</b>	<b>Funder</b>	<b>Expensed</b>
Chittenden, Franklin, Rutland, Washington	ADAP	\$ 148,420.20
Franklin	JABG	\$ 15,568.18
Windsor	DPS DUI	\$ 148,879.54
Chittenden	SAMHSA	\$ 137,425.55
Chittenden	BJA	\$ 16,553.50
	<b>TOTAL for Calendar Year 2014</b>	<b>\$ 466,846.97</b>

## **APPENDIX C: KEY COMPONENTS OF DRUG COURTS**

**Source:** National Association of Drug Court Professionals (NADCP), “Defining Drug Courts: The Key Components,” <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>

Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights

Key Component #3: Eligible participants are identified early and promptly placed in the drug court program

Key Component #4: Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing

Key Component #6: A coordinated strategy governs drug court responses to participants’ compliance

Key Component #7: Ongoing judicial interaction with each drug court participant is essential

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations

Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness

## APPENDIX D: DRUG COURT BEST PRACTICES

**Source:** National Association of Drug Court Professionals (NADCP), Adult Drug Court Best Practice Standards, Vol. I (2013) and Adult Drug Court Best Practice Standards, Vol. II (2014), <https://www.nadcp.org/Standards>

### I. TARGET POPULATION

Eligibility and exclusion criteria for the Drug Court are predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in Drug Courts. Candidates are evaluated for admission to the Drug Court using evidence-based assessment tools and procedures.

### II. HISTORICALLY DISADVANTAGED GROUPS

Citizens who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other citizens to participate and succeed in the Drug Court.

### III. ROLES AND RESPONSIBILITIES OF THE JUDGE

The Drug Court judge stays abreast of current law and research on best practices in Drug Courts, participates regularly in team meetings, interacts frequently and respectfully with participants, and gives due consideration to the input of other team members.

### IV. INCENTIVES, SANCTIONS, AND THERAPEUTIC ADJUSTMENTS

Consequences for participants' behavior are predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification.

### V. SUBSTANCE ABUSE TREATMENT

Participants receive substance abuse treatment based on a standardized assessment of their treatment needs. Substance abuse treatment is not provided to reward desired behaviors, punish infractions, or serve other nonclinically indicated goals. Treatment providers are trained and supervised to deliver a continuum of evidence-based interventions that are documented in treatment manuals.

### VI. COMPLEMENTARY TREATMENT AND SOCIAL SERVICES

Participants receive complementary treatment and social services for conditions that co-occur with substance abuse and are likely to interfere with their compliance in Drug Court, increase criminal recidivism, or diminish treatment gains.

## VII. DRUG AND ALCOHOL TESTING

Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized substance use throughout participants' enrollment in the Drug Court.

## VIII. MULTIDISCIPLINARY TEAM

A dedicated multidisciplinary team of professionals manages the day-to-day operations of the Drug Court, including reviewing participant progress during precourt staff meetings and status hearings, contributing observations and recommendations within team members' respective areas of expertise, and delivering or overseeing the delivery of legal, treatment, and supervision services.

## IX. CENSUS AND CASELOADS

The Drug Court serves as many eligible individuals as practicable while maintaining continuous fidelity to best practice standards.

## X. MONITORING AND EVALUATION

The Drug Court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.

## APPENDIX E: OREGON'S AUGUST 2017 DEFELONIZATION LAW

On August 15, 2017, Oregon's Governor signed H.B. 2355, which modifies the circumstances under which possession of a Schedule I or II controlled substance<sup>140</sup> is classified as a felony. Under the bill, possession is a class A misdemeanor,<sup>141</sup> except that possession remains a Class B felony<sup>142</sup> (in the case of Schedule I controlled substances) or a Class C felony<sup>143</sup> (in the case of Schedule II controlled substances) if the defendant possesses a usable quantity<sup>144</sup> of a controlled substance and any one of four factors is present:

- 1) The defendant has a prior felony conviction of any kind.
- 2) The defendant has two or more prior convictions for possessing a usable quantity of a controlled substance.
- 3) The offense is a commercial drug offense.
- 4) The defendant possesses more than a specified amount of certain controlled substances as follows:
  - i. The person possesses one gram or more of a mixture or substance containing a detectable amount of heroin.
  - ii. The person possesses one gram or more or five or more pills, tablets or capsules of a mixture or substance containing a detectable amount of 3,4-methylenedioxyamphetamine, methylenedioxymethamphetamine, or methylenedioxy-N-ethylamphetamine.
  - iii. The person possesses two grams or more of a mixture or substance containing a detectable amount of methamphetamine.
  - iv. The person possesses:
    - (A) Forty or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide; or
    - (B) Twelve grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin.
  - v. The person possesses 40 or more user units of a mixture or substance containing a detectable amount of methadone.
  - vi. The person possesses 40 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of oxycodone.

<sup>140</sup> Under Oregon law, Schedule I and II controlled substances consist of drugs (or immediate precursors) as classified under the federal Controlled Substances Act, 21 U.S.C. §§ 811–812, but do not include cannabis-type substances or drugs excluded or added by rule adopted by the State Board of Pharmacy. *See* O.R.S. §§ 475.005, .035.

<sup>141</sup> A class A misdemeanor carries a maximum term of imprisonment of up to 364 days and a fine of up to \$6,250. O.R.S. §§ 161.615, .635.

<sup>142</sup> A class B felony carries a maximum term of imprisonment of 10 years and a fine of up to \$250,000. O.R.S. §§ 161.605(2), .625(1)(c).

<sup>143</sup> A class C felony carries a maximum term of imprisonment of five years and a fine of up to \$125,000. O.R.S. § 161.605(3), .625(1)(d).

<sup>144</sup> O.R.S. § 475.005(22) defines “usable quantity” as follows:

“(22) ‘Usable quantity’ means:

(a) An amount of a controlled substance that is sufficient to physically weigh independent of its packaging and that does not fall below the uncertainty of the measuring scale; or

(b) An amount of a controlled substance that has not been deemed unweighable, as determined by a Department of State Police forensic laboratory, due to the circumstances of the controlled substance.”

- vii. The person possesses two grams or more of a mixture or substance containing a detectable amount of cocaine.