

JAMES DUFF LYALL
EXECUTIVE DIRECTOR

JIM MORSE
PRESIDENT



October 13, 2017

Joint Legislative Justice Oversight Committee
Vermont State House
115 State Street
Montpelier, Vermont 05633-5301

Re: Charge of Act 62 Related to Pretrial Communication

Dear Distinguished Members of the Joint Legislative Justice Oversight Committee,

Pursuant to Section 3 of Act 62 of 2017, the ACLU of Vermont¹ has consulted with the Court Administrator, the Department of State's Attorneys and Sheriffs, and the Office of the Defender General, and finds and recommends the following:

A noncustodial defendant's failure to appear (FTA) in court may have adverse consequences for the defendant, including the issuing of a bench warrant, the imposition or forfeiture of bail, or greater fines than warranted by the initial alleged offense.² Failures to appear also cost the state money, time, and resources. Many jurisdictions that have implemented pretrial court date reminder systems to reduce failure to appear—including written, telephonic, and/or electronic reminders—have successfully reduced FTA rates.³

¹ The ACLU-VT is a statewide nonprofit, nonpartisan organization with more than 7,500 members and supporters dedicated to the principles of liberty and equality embodied in the constitutions and laws of Vermont and the United States. It is the Vermont affiliate of the American Civil Liberties Union, a nationwide nonpartisan organization with over 1,500,000 members. The ACLU-VT is dedicated to protecting the individual rights and liberties embodied in the state and federal constitutions, and has a longstanding interest in advancing the civil rights of Vermonters.

² See 13 V.S.A. § 7560a.

³ See, e.g., Daniel Bernal, *Taking the Court to the People: Real-World Solutions for Nonappearance*, 59 ARIZ. L. REV. 547, 563-66 (2017),

<http://arizonalawreview.org/pdf/59-2/59arizlrev547.pdf> (highlighting a Pima County (AZ) calling reminder system that has reduced nonappearance by 24% and a texting reminder system with an 85% success rate); Alan Tomkins, et al., *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, COURT REVIEW: THE JOURNAL OF THE AMERICAN JUDGES ASSN 395 (2010),

<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1398&context=ajacourtreview> (describing a Nebraska postcard reminder project that significantly reduced FTA rates); "Court Appearance Notification System," Oregon Knowledge Bank (2006), <http://okb.oregon.gov/portfolio-item/court-notification/>

There is currently no standardized statewide reminder system. If a defendant is referred for pretrial monitoring, the defendant's assigned pretrial coordinator will work to remind the defendant of court dates, but that does not cover all defendants.

Currently, the Vermont Judiciary has a contract with Tyler Technology for an installation of the Odyssey software. The Odyssey software, as contracted, will have the capability to send email notifications, like court reminders, to court-involved parties. The software could also send notifications to most, if not all, cell phones via carrier email to text functionality – e.g., if one emailed a message to 8025555555@txt.att.net, that would send the email as a text message to the (802) 555-5555 phone. Tyler expects direct text messaging capability (i.e., the ability to send text messages without relying on email) to be available through the Odyssey software in 2018. Tyler has not yet decided whether the direct text functionality will be included with existing contracts or will be available as an add-on at extra cost.⁴ The Judiciary currently plans to pilot the Odyssey software in several counties in 2019 and fully implement it statewide by 2021.

The ACLU recommends that the state implement a standardized reminder system as soon as possible. Once the Odyssey software is implemented, the state should take advantage of the software's text reminder function (including paying for the addition of that functionality should it not be included in the standard contract). In the meantime, the state should look to implement an interim reminder system. While adopting an interim system may be difficult logistically, the experiences of other jurisdictions prove that pretrial reminder systems are effective and will help to ameliorate costs, monetary and otherwise, for both defendants and the state.

Please do not hesitate to contact us should you have further questions or need additional information.

Sincerely,



Chloé White
Policy Director
ACLU of Vermont

(describing a telephonic reminder system that reduced the overall FTA rate by 37% in one county).

⁴ All of the foregoing information in this paragraph stems from a conversation between Albert Coccagna, IT Director for the Vermont Department of State's Attorneys and Sheriffs, and Bob Schott, Sales Director for Tyler Technologies.