

1 Introduced by Senator Sears

2 Referred to Committee on

3 Date:

4 Subject:

5 Statement of purpose of bill as introduced: This bill proposes to expand
6 pretrial services.

7 An act relating to pretrial services

8 It is hereby enacted by the General Assembly of the State of Vermont:

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

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

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

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

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

1 (2) To assist individuals with criminal records and with substance abuse
2 or mental health treatment needs. Programming for these individuals is
3 intended to support an individual in accessing any needed treatment or other
4 resources with the aim of improving the person’s health and reducing future
5 adverse involvement in the justice system.

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

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

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

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

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

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

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

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

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

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

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

1 (4) Each State's Attorney, in cooperation with the Office of the Attorney
2 General and the adult court diversion ~~project~~ program, shall develop clear
3 criteria for deciding what types of offenses and offenders will be eligible for
4 diversion; however, the State's Attorney shall retain final discretion over the
5 referral of each case for diversion.

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

10 (6) Information related to the present offense that is divulged during the
11 adult diversion program shall not be used ~~in the prosecutor's case~~ against the
12 person in a criminal case for any purpose, including impeachment or cross-
13 examination. However, the fact of participation and success, or reasons for
14 failure may become part of the prosecutor's records.

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

21 (i) name and date of birth;

- 1 (ii) offense charged and date of offense;
2 (iii) place of residence;
3 (iv) county where diversion process took place; and
4 (v) date of completion of diversion process.

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

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

10 (9) Each participant shall pay a fee to the local adult court diversion
11 project. The amount of the fee shall be determined by project officers or
12 employees based upon the financial capabilities of the participant. The fee
13 shall not exceed \$300.00. The fee shall be a debt due from the participant, and
14 payment of such shall be required for successful completion of the program.
15 Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall
16 be retained and used solely for the purpose of the court diversion program.

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

19 ~~(e)~~(g) Within 30 days of the two-year anniversary of a successful
20 completion of adult diversion, the court shall provide notice to all parties of
21 record of the court's intention to order the ~~sealing~~ expungement of all court

1 files and records, law enforcement records other than entries in the adult court
2 diversion ~~project's~~ program's centralized filing system, fingerprints, and
3 photographs applicable to the proceeding. The court shall give the State's
4 Attorney an opportunity for a hearing to contest the ~~sealing~~ expungement of
5 the records. The court shall ~~seal~~ expunge the records if it finds:

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

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

12 (3) rehabilitation of the participant has been attained to the satisfaction
13 of the court.

14 ~~(f)(h) Upon the entry of an order sealing such files and records under this~~
15 ~~section, the proceedings in the matter under this section shall be considered~~
16 ~~never to have occurred, all index references thereto shall be deleted, and the~~
17 ~~participant, the court, and law enforcement officers and departments shall reply~~
18 ~~to any request for information that no record exists with respect to such~~
19 ~~participant inquiry in any matter. Copies of the order shall be sent to each~~
20 ~~agency or official named therein~~ Expungement pursuant to this section shall
21 have the same force and effect as provided in 13 V.S.A. § 7606.

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

4 ~~(h)(i)(A)~~ The process of automatically ~~sealing~~ expunging records as
5 provided in this section shall only apply to those persons who completed
6 diversion on or after July 1, ~~2002~~ 2017. Any person who completed diversion
7 prior to July 1, ~~2002~~ 2017 must apply to the court to have his or her records
8 ~~sealed~~ expunged. Sealing Expungement shall occur if the requirements of
9 subsection ~~(e)~~ (g) of this section are met.

10 (B) Persons who completed adult diversion on or after July 1, 2002,
11 and before July 1, 2017, shall have their records sealed within 30 days of the
12 two-year anniversary of a successful completion of diversion if they meet the
13 requirements of subdivisions (1)-(3) of subsection (g). The notice and hearing
14 requirements of subsection (g) shall apply. Sealing pursuant to this section
15 shall have the same force and effect as provided in 13 V.S.A. § 7607.

16 (j) Any person who has completed diversion may file a petition with the
17 court to have their records expunged if they meet the requirements of
18 subdivisions (1)-(3) of subsection (g). The State's Attorney shall be the
19 responding party.

20

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

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

6 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

7 (a)(1) The objective of a pretrial risk assessment is to provide information
8 to the Court for the purpose of determining whether a person presents a risk of
9 nonappearance or a threat to public safety so the Court can make an
10 appropriate order concerning bail and conditions of pretrial release.

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

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

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

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

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

10 ~~(2) As used in this section, "listed crime" shall have the same meaning as~~
11 ~~provided in section 5301 of this title and "drug trafficking" means offenses~~
12 ~~listed as such in Title 18 A person charged with an offense for which~~
13 ~~registration as a sex offender is required pursuant to subchapter 3 of chapter~~
14 ~~167 of this title or an offense punishable by a term of life imprisonment shall~~
15 ~~not be eligible under this section.~~

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

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

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

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

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

1 ~~falls into one of the categories. Criminal justice professionals charged with~~
2 ~~implementation shall adhere to the plan.~~

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

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

10 (A) meet with a pretrial ~~monitor~~ services coordinator on a schedule
11 set by the Court; ~~and~~

12 (B) participate in a needs screening with a pretrial services
13 coordinator; and

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

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

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

3 (B) connecting the person with community-based treatment
4 programs, rehabilitative services, recovery supports, and restorative justice
5 programs; and

6 (C) supporting a referral to a diversion program.

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

12 (4) The conditions authorized in subdivision (1) of this subsection shall
13 be in addition to any other conditions of release permitted by law and shall not
14 limit the Court in any way. A violation of the conditions authorized by
15 subdivision (1) of this subsection shall not constitute a violation of section
16 7559 of this title.

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

1 pretrial services coordinator may report is limited to whether a risk assessment
2 indicates risk of non-appearance, whether further substance use assessment or
3 treatment is indicated, whether mental health assessment or treatment is
4 indicated, whether a person participated in a clinical assessment, and whether
5 further engagement with pretrial services is recommended unless the person
6 provides written permission to release additional information. No information
7 related to the present offense directly or indirectly derived from the risk
8 assessment, needs screening, or other conversation with the pretrial services
9 coordinator may be used for any purpose, including impeachment and cross-
10 examination, against the person in any criminal case. The immunity provisions
11 of this subsection apply only to the use and derivative use of information
12 gained as a proximate result of the risk assessment or needs screening.

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

16 (3) ~~The Vermont Supreme Court in accordance with judicial rulemaking~~
17 ~~as provided in 12 V.S.A. § 1 shall promulgate and the Department of~~
18 ~~Corrections in accordance with the Vermont Administrative Procedure Act~~
19 ~~pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody,~~
20 ~~control, and preservation of information consistent with the confidentiality~~
21 ~~requirements of this section. Emergency rules adopted prior to January 1, 2015~~

1 ~~pursuant to this section shall be considered to meet the "imminent peril"~~
2 ~~standard under 3 V.S.A. § 844(a)~~ All records of information obtained during
3 risk assessment or needs screening shall be stored in a manner making them
4 accessible only to the Director of Pretrial Services and Pretrial Service
5 Coordinators for a period of three years, after which the records shall be
6 maintained as required by state law. The Director of Pretrial Services shall be
7 responsible for the destruction of records when ordered by the court.

8 (f) The Attorney General's Office shall:

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

12 (2) develop pretrial services outcomes following the designated State of
13 Vermont performance accountability framework and, in consultation with the
14 Department of State's Attorneys and Sheriffs; the Office of the Defender
15 General; and the Judiciary, report annually by December 1 to the General
16 Assembly on services provided and outcome indicators.

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19 Sec. X. EFFECTIVE DATE

20 This act shall take effect on