
MEMORANDUM

OFFICE OF THE ATTORNEY GENERAL

TO: Vermont General Assembly

FROM: Willa Farrell, Court Diversion & Pretrial Services Director

RE: Pretrial Services and Court Diversion Report pursuant to 13 V.S.A. § 7554c (f) and 3 V.S.A. § 164 (d)

DATE: January 17, 2019

Statutory Report Requirements

13 V.S.A. § 7554c (f) and 3 V.S.A. § 164 (d) direct the Office of the Attorney General to report annually to the General Assembly on services provided and outcome indicators for Court Diversion and Pretrial Services.

I. Services Provided

Needs Screening & Risk Assessment

Pretrial Services staff offer risk assessments and needs screenings to individuals lodged and unable to post bail within 24 hours. Results of the assessment and screening may inform decisions made by judges and prosecutors. Needs screenings direct the focus of Pretrial Service Coordinators' work with individuals.

Pretrial Monitoring

Pretrial monitoring is for adults with substance use or mental health treatment needs who are going through the court process and awaiting final case resolution. Individuals may choose to engage with pretrial services, or monitoring may be ordered by the court. A person's refusal to engage cannot result in a violation of conditions of release. Pretrial Service Coordinators quickly connect people to substance use, mental health and other supportive community-based services.

Tamarack Program 3 V.S.A § 164(b)(2)

This restorative justice program is for adults charged with a crime who have a substance use or mental health treatment need regardless of their criminal history. Pretrial Service Coordinators quickly connect those referred to substance use, mental health and other supportive community-based services. Participants must be willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm. Prosecutors subsequently dismiss the charge of successful participants.

Court Diversion Program 3 V.S.A §§ 163 and 164(b)(1)

This restorative justice program is for youth with a delinquency petition and adults charged with a crime. Court Diversion case managers work with those referred who are willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm. Prosecutors subsequently dismiss the charge of successful participants.

FY 2018 Data

Data on referrals to Court Diversion and Tamarack for FY 2017 and FY 2018 are summarized in a chart on page 4. The chart illustrates the import role of Diversion in resolving criminal cases and the recent increase in prosecutors' referrals to Diversion. These data do not capture the full picture of Diversion referrals; for example, prosecutors also refer felony cases to Diversion. Statewide, approximately three percent of all referrals were felony charges in FY 2018.

In reviewing this chart, please keep in mind several caveats regarding the data:

1. Not all misdemeanor offenses are presumptively eligible for Diversion or Tamarack. The data sources regarding charged misdemeanors included below currently do not distinguish between eligible and non-eligible offenses. For example, a DUI charge is not presumptively eligible for Diversion.
2. The data sources do not distinguish misdemeanor charges that arise when an individual has another ineligible (e.g. felony) docket pending or is already under Department of Corrections supervision.
3. Some State Attorneys' use pre-charge programs where they are available for some Driving with License Suspended cases instead of Diversion. Pre-charge referrals are not captured in the FY 2018 data below.
4. The "Diversion Referral – Criminal Division" data points only identify referrals in which the Defendant accepted the Diversion offer. It does not include referrals made by the State's Attorney but declined by the Defendant.

The Department of State's Attorneys and Sheriffs recently began collecting the reasons prosecutors give for not referring a presumptively eligible offense. Next year's report will include these data.

AGO Community Justice Programs
Prosecutor Referral Programs: Court Diversion & Tamarack

	FY 2018				FY 2017			Diversions & Other Referrals as % of New Misdemeanor Charges
	New Misdemeanor Charges	Diversions Referrals - Criminal Division	Tamarack Referrals*	Diversions & Tamarack as % of New Misdemeanor Charges	New Misdemeanor Charges	Diversions Referrals - Criminal Division	Other Prosecutor Referrals (PTS)**	
Addison	388	68	17	22%	395	48	2	13%
Bennington	865	193	97	34%	925	96	25	13%
Caledonia	560	82	23	19%	633	63	16	12%
Chittenden	2,961	646	96	25%	3,564	219	267	14%
Essex	69	14	5	28%	56	11	0	20%
Franklin	1,262	327	32	28%	1,097	89	1	8%
Grand Isle	103	13	6	18%	77	10	0	13%
Lamoille	339	140	16	46%	374	113	59	46%
Orange	373	70	14	23%	415	67	0	16%
Orleans	558	81	18	18%	462	56	0	12%
Rutland	1,191	99	113	18%	1,254	71	13	7%
Washington	1,099	207	114	29%	1,145	169	19	16%
Windham	1,105	136	69	19%	1,024	80	0	8%
Windsor	907	261	199	51%	955	118	116	25%
Total/Statewide	11,780	2337	819	27%	12,376	1210	518	14%

New Misdemeanor Charges - data provided by Vt. Judiciary

Other data gathered by AGO from county programs

**CN Tamarack referrals includes RICC referrals*

***Referrals to Pretrial Services (PTS) & RICC in lieu of prosecution*