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OFFICE OF THE ATTORNEY GENERAL
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MEMORANDUM

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 5, 2021

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 Services

Pretrial Services are provided to adults with substance use or mental health treatment needs who are going through the court process and awaiting final case resolution. Judges order defendants to work with Pretrial Services; however, a person's refusal to engage cannot result in a violation of conditions of release. Individuals may also choose to engage with pretrial services. 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 2020 Data

Pretrial Services

Judges continue to increase their use of Pretrial Services. Even with courts essentially closed for most of March through June, the number of Pretrial Services orders increased five percent over FY 2019 figures; the previous year, court orders doubled. The chart on page 5 shows Pretrial Service orders increasing during the past years from one to six to eight percent of misdemeanor filings. It is worth noting, however, that approximately 24% of defendants ordered to work with Pretrial Services were charged with a felony.

Adult Diversion and Tamarack

Data on referrals to Adult Court Diversion and Tamarack for FY 2019 and FY 2020 are summarized in a chart on page 6; similar information for Youth Diversion is on page 7. These data do not capture the full picture of Diversion referrals; for example, prosecutors also refer felony cases to Diversion. Three to five percent of all referrals are felony charges.

These charts illustrate the important role of Diversion in resolving cases. Diversion and Tamarack are no longer an alternative for a few cases but a standard component of the criminal justice system.

In March, following the Supreme Court's Administrative Order, few cases were filed in court, and referrals to Diversion or Tamarack dropped off. With the reopening of the courts this summer, referrals have increased. Referrals in FY 20 were approximately 75% of what was expected based on trends earlier in the year; regardless, referrals last year numbered more than two years ago. Diversion and Tamarack referrals represented 27% of all misdemeanors in FY 2020.

Youth Diversion & Youthful Offenders

In FY 2020, over 40% of delinquencies filed in Family Diversion were referred to Youth Diversion and over 20% of Youthful Offenders to Diversion, a significant increase compared to previous years.

Possible Causes of Geographical Disparities in Referrals

The rate of referral to Court Diversion and Tamarack varies by county for a number of reasons. The rate and type of crime varies by county, law enforcement has discretion regarding when to issue a citation, and prosecutors retain discretion regarding when to file a charge or a youthful offender petition. Factors that affect a prosecutor's decision to refer to Diversion or Tamarack include the individual facts of the case, the availability of alternative restorative justice services, the prosecutor's views on restorative justice for repeat offenders, and his or her experience working with the county Court Diversion program.

Specific to the data included in this report, the Department of State's Attorneys has provided several caveats that also help explain the different rates of referral to Diversion and Tamarack.

Data Caveats

In reviewing this chart, please keep in mind several caveats provided by the Department of State's Attorneys 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's Attorneys use pre-charge programs and other types of specialized alternatives where they are available instead of Diversion, in addition to post-conviction reparative panels. These referrals account for a significant number of cases that are not captured in the FY 2019 / 20 data below.
 4. The decentralized system of delivering alternative justice programs results in inconsistencies in the types and quality of services that are offered in each county.
 5. 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.

Pretrial Services

	FY 2020			FY 2019			FY 2018		
	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges	New Misd Charges	Pretrial Monitoring	PTS as % of New Misd Charges
Addison	293	58	20%	359	79	22%	388	87	22%
Bennington	789	17	2%	993	14	1%	865	25	3%
Caledonia	424	29	7%	553	16	3%	560	2	0%
Chittenden	2,495	181	7%	3,308	164	5%	2,961	69	2%
Essex	46	7	15%	46	2	4%	69	1	1%
Franklin	1,027	60	6%	1,405	75	5%	1,262	6	0%
Grand Isle	82	2	2%	110	2	2%	103	1	1%
Lamoille	428	196	46%	385	150	39%	339	64	19%
Orange	261	39	15%	374	54	14%	373	34	9%
Orleans	560	30	5%	566	36	6%	558	22	4%
Rutland	805	15	2%	1,073	8	1%	1,191	12	1%
Washington	1,015	83	8%	1,358	41	3%	1,099	5	0%
Windham	707	49	7%	1,052	75	7%	1,105	49	4%
Windsor	602	2	0.3%	984	13	1.3%	907	10	1.1%
Total	9,534	768	8%	12,566	729	6%	11,780	387	3%
	<i>Preliminary Data</i>								

New Misd Charges - data provided by Vt. Judiciary

Other data gathered by AGO from county programs

**Pretrial Services: # of Court orders, formerly referred to as Monitoring*

Adult Court Diversion and Tamarack

	FY 2020				FY 2019			
	New Misd Charges	Diversion Referrals - Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges	New Misd Charges	Diversion Referrals - Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges
Addison	293	96	26	42%	359	83	25	30%
Bennington	789	125	60	23%	993	263	92	36%
Caledonia	424	67	14	19%	553	103	25	23%
Chittenden	2,495	448	139	24%	3,308	809	287	33%
Essex	46	11	4	33%	46	7	7	30%
Franklin	1,027	223	20	24%	1,405	511	65	41%
Grand Isle	82	16	7	28%	110	19	6	23%
Lamoille	428	98	22	28%	385	151	58	54%
Orange	261	111	14	48%	374	89	19	29%
Orleans	560	80	19	18%	566	108	28	24%
Rutland	805	131	67	25%	1,073	135	197	31%
Washington	1,015	209	84	29%	1,358	263	135	29%
Windham	707	81	30	16%	1,052	116	28	14%
Windsor	602	294	75	61%	984	345	194	55%
Total	9,534	1,990	581	27%	12,566	3,002	1,166	33%
<i>Preliminary data</i>								

*New Misd Charges - data provided by Vt. Judiciary
Other data gathered by AGO from county programs*

Youth Court Diversion and Youthful Offenders

	FY 2020						FY 2019					
	New Filings		Diversion Referrals				New Filings		Diversion Referrals			
	Delinquency Filings	Youthful Offenders	Delinquency	YO	Del. Referrals as % of Filings	YO Referrals as % of Filings	Delinquency Filings	Youthful Offenders	Delinquency	YO	Del. Referrals as % of Filings	YO Referrals as % of Filings
Addison	15	17	10	3	67%	18%	28	18	16	1	57%	6%
Bennington	111	8	20	7	18%	88%	89	7	24	0	27%	0%
Caledonia	13	6	8	2	62%	33%	13	15	10	0	77%	0%
Chittenden	104	132	46	28	44%	21%	155	119	107	19	69%	16%
Essex	5	1	3	0	60%	0%	0	1	0	0	NA	0%
Franklin	80	31	36	2	45%	6%	86	76	54	8	63%	11%
Grand Isle	1	4	1	0	100%	0%	4	5	4	0	100%	0%
Lamoille	36	5	16	11	44%	220%	39	8	18	1	46%	13%
Orange	22	9	6	2	27%	22%	26	11	17	3	65%	27%
Orleans	39	22	18	7	46%	32%	25	49	14	0	56%	0%
Rutland	59	36	18	1	31%	3%	78	26	29	0	37%	0%
Washington	78	50	48	14	62%	28%	64	89	34	15	53%	17%
Windham	34	21	16	0	47%	0%	54	29	28	4	52%	14%
Windsor	37	41	27	6	73%	15%	42	51	36	3	86%	6%
Total	634	383	273	83	43%	22%	703	504	392	54	56%	11%
<i>Preliminary data</i>												

New Delinquency Filings - data provided by Vt. Judiciary

Other data gathered by AGO from county programs