

H.645 Expansion of Restorative Justice
Josef Lavanway, South Burlington Community Justice Center
Carol Plante, Montpelier Community Justice Center
Lyn Gatt; Orleans County Restorative Justice Center.
Testimony - House Judiciary Committee - February 14, 2024

Thank you for having us come in and testify about H.645. We appreciate all the hard work your committee has done related to restorative justice. We share your goals of stable funding and geographic equity.

All three of our programs are primarily funded by DOC. DOC-funded programs include these examples of restorative justice services:

- Community referrals with or without law enforcement involvement -
- Pre-charge referrals by law enforcement or prosecutors – these types of cases help to prevent situations from rising to the level of criminality.
- Post-charge referrals by prosecutors
- Post-adjudication referrals by the courts
- Re-entry services, including transitional housing and supports services

In addition to repairing the harm, we also help create community connections. Our programs involve the participation of community volunteers who create a contract with a participant. Our volunteers are a large part of the Restorative Justice process and they overwhelmingly share a connection to the community and geographical centers where they are serving (9,000 Hours). The goals of the contract include making amends to those affected (including the community) and connecting participants with resources to prevent similar incidences happening in the future.

Although each of our programs are based on individual community needs, we all engage in very similar restorative practices. We have close relationships with law enforcement and community resource providers. Incidents are often a product of a lack of access to economic or social service resource; we try to get to the underlying causes of an incident and build supports into the restorative contract. For example, part of DOC funding has enabled us for decades to address crime and conflict in our individual communities that we serve and establish strong connections with service providers and community partners.

- Retail Theft: CJC's have been able to put supports into individual contracts which attempt to prevent future incidents such as connecting to supports in the community. CJC's also partner with local retail establishments in our community as well as other community businesses, to address retail theft and its impact on not only the mom and pop business owners, but also the employees of all businesses.
- Due to our many years of relationships and relationship building with local law enforcement and community policing we are able to reach the most marginalized individuals and communities to give them an opportunity to not only make things right, but to access much needed resources related to substance use, poverty, housing, etc.

We have specific comments on funding, Title 24, and some of the provisions of H.645.

Funding

Although one of the primary goals of H.645 is to ensure stable funding for pre- and post-charge restorative practices, we are concerned about the availability of continued funding for all restorative justice programs, specifically those which are primarily funded by DOC. Because of the important work that we do in our communities, as outlined above, it is imperative that all the programs which currently provide those services will continue to be funded.

It is likely that, as a result of H.645, some programs will lose significant funding once the transition is made to the new pre- and post-diversion system whether in FY 26 or FY 29 respectively. This does not align with one of the goals of the bill which is to stabilize funding for the existing restorative justice programs.

Due to the necessary participation of restorative justice programs in the development of the new pre- and post-charge program, as outlined in the bill, we will need funding in FY 2025 to work with other entities to develop the policies, outcomes, etc., in H.645. We also have a budget request for FY 25 that we will present to the appropriations committees, but would welcome the opportunity to present to your committee as well at another time.

Title 24

Local framework

Title 24 exhibits the spirit of Restorative Justice and created the local framework for the Community Justice Centers. Being locally based in our communities allows us to meet the needs of our specific communities in a manner that is consistent, caring and person-centered.

Community Justice Center work thrives from the ability to meet our community's needs through a structure built by its community members. Local knowledge and community engagement in the healing process are key tenets in restorative justice practices. These restorative justice approaches are built *by and for each community*.

Agency of Human Services support for CJsCs

Title 24 sets for the relationship CJsCs are to have with state government entities and outlines specific departments.

Victim Rights

Title 24 explicitly protects victim information - victim information that is not part of the public record shall not be released without the victim's consent. H.645 should be in alignment with title 24 in regard to victim rights.

Comments on specific sections of H.645

Many of our comments are the same in both the juvenile and adult provisions of the bill, so we have referenced them together - § 163 (juvenile sections) and § 164 (adult sections).

Definition of "pre-charge"

Pre-charge referrals historically for those agencies who have been doing pre charge work occurs at an earlier intercept point than current court diversion programming. Codifying pre charge into the diversion model brings forth concerns regarding the work actually being done before a person is charged.

- 3 V.S.A § 162a – “Pre-charge diversion” definition includes probable cause. There are many referrals that we receive from law enforcement or other community referrals that are below the probable cause threshold.
 - A distinction must be made between “pre-charge diversion” as defined in this bill, and “pre-charge referrals” that can include community referrals and law enforcement referrals that do not meet the probable cause standard. Currently these cases are funded by DOC. Where will the funding come from under H.645?

Juvenile Court Diversion Program and Adult Court Diversion Program

- 3 V.S.A. § 163 (b)(1) and 3 V.S.A. § 164 (b)(1) - the AGO will fund diversion programs through grants or contracts with a ***single municipality or organization*** to provide community-based restorative justice programs and services.
 - Financial viability through grants/contracts, either through the AGO or other sources (municipalities, foundations, etc.) should be ensured for the ***existing CJC programs*** to continue their valuable community work.
 - There are already MOUs in place with SAs and PDs.
 - All counties may not be funded (dependent on SA policies). They should still be able to receive direct referrals from law enforcement and the community.
- 3 V.S.A. § 163 (b)(2) and 3 V.S.A. § 164 (b)(1) – AGO has the discretion to require local financial contributions.
 - We do not support the uncertainty of the AGO requiring local financial contributions. The state should fund the pre-charge and post-charge diversion programs. Local contributions could be welcome, but not required at the discretion of the AGO.
- 3 V.S.A. § 163 (b)(3) and 3 V.S.A. § 164 (b)(3) – List of organizations that will consult with the AGO in developing program outcomes - SAs, the DG, CCVS, the Judiciary, and the Office of Racial Equity.
 - CJsCs should be included, as restorative justice is our area of expertise. A component of restorative justice is “nothing about us without us”.
- 3 V.S.A. § 163 (b)(4) or (5) and 3 V.S.A. § 164 (b)(4) –h List of organizations that will consult with the AGO in the development of policies and procedures manual by the AGO, in addition to CCVS, the State’s Attorney’s Victim’s Advocates, the Office of Racial Equity, and the State Archivist.
 - CJsCs should be included, as restorative justice is our area of expertise. A component of restorative justice is “nothing about us without us”.

Pre-Charge Diversion Policy

- 3 V.S.A. § 163(c)(1) and 3 V.S.A. § 164(c)(1) – In order for an RJ program to receive pre-charge diversion referrals (changed from “receive grants or contracts”), each SA must adopt a juvenile pre-charge referral policy.
 - If the restorative justice program has funding from another source (i.e., municipality), the program should be able to accept referrals.
 - If an SA does not adopt a policy, then a county will be without pre and post charge restorative justice programming.
- 3 V.S.A. § 163(c)(2)(D)(i) and 3 V.S.A. § 164(c)(2)(D)(i)– procedure to include returning the case to LE or prosecutor when the prosecutor withdraws a referral to pre-charge diversion.
 - A prosecutor should not be able to withdraw a pre-charge referral when the referral was made by law enforcement.
- 3 V.S.A. § 163(c)(2)(E) and 3 V.S.A. § 164(c)(2)(E) – The policy includes a statement reiterating that the State’s Attorney retains final discretion over the cases that are eligible for diversion and may deviate from the adopted policy in accordance with such discretion.
 - If we are looking for geographic equity, the SA should have to follow a statewide policy.

Post-Charge Diversion Requirements

- 3 V.S.A. § 163(c)(3) 3 V.S.A. § 164(c)(3) – Each State’s Attorney, in cooperation with the Office of the Attorney General and the juvenile post-charge diversion programs, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State’s Attorney shall retain final discretion over the referral of each case for diversion.
 - The SAs should have to follow the criteria.

Confidentiality

- 3 V.S.A. § 163(d)(3)(A) and 3 V.S.A. § 164(d)(4)(A) - A victim may only request information relating to the victim that is divulged by the diversion participant during the juvenile diversion process. A victim shall keep the information released to the victim strictly confidential and shall not be disclosed.
 - Why can the victim only request information relating to the victim that is divulged by the diversion participant? Other information should be accessible to the victim.
- 3 V.S.A. § 163(d)(3)(B) and 3 V.S.A. § 164(d)(4)(B) – The victim shall keep all information learned through the reparative process strictly confidential and it shall not be disclosed.
 - There should be exceptions for victim disclosure – therapist, close friend, family member, etc.

- 3 V.S.A. § 163(d)(3)(C) and 3 V.S.A. § 164(d)(4)(C) - Nothing in this section shall be construed to prohibit a victim's exercise of rights as otherwise provided by law.
 - There should be a clear understanding and acknowledgement of victim's rights otherwise provided by law before finalizing H.645 to ensure there are no conflicts of law.
- 3 V.S.A. § 164(d)(1) (adult section only) – If there are conditions of release, the matter is confidential after successful completion of diversion.
 - The matter should remain confidential even if diversion is not successfully completed. Participants need to know from the outset that everything that is said, outside of enumerated exceptions in the bill, will be strictly confidential. It is essential to the success of a restorative justice process.

Rights and Responsibilities

- 3 V.S.A. § 163(e) and 3 V.S.A. § 164(e)(2)(A) and (B) – Notification of victim's rights
 - The process for informing victims of their rights should be set forth in the bill – (by legal counsel perhaps?)

Diversions Program Plan

Section 9 – In counties where there is more than one pre-charge and post-charge diversion provider, the Community Justice Unit of the Office of the Attorney General shall collaborate with each county's juvenile and adult pre-charge and post-charge providers and each county's State's Attorney or designee to develop a plan to streamline the administration and provision of juvenile and adult pre-charge and post-charge diversion programs on or before July 1, 2026.

- The plan should continue funding and programming of all of the current DOC funded CJC programs in the effort to provide equitable access and reliable funding.

Pre-Charge Diversion Grants

Section 10 - In counties where there is more than one pre-charge or post-charge diversion provider and, based on the records of the Department of Corrections, the pre-charge provider received an average of 25 pre-charge referrals per year during the three preceding fiscal years, the Attorney General shall offer to grant or contract directly with all pre-charge providers in that county or provide for sub-granting or sub-contracting by the current post-charge provider in that county.

- The programs which provide less than 25 pre-charge referrals on average will have to cease doing pre-charge cases per H.645, which will result in inequitable access to a restorative process.
- The notion of providers to sub-contract with the AGO could result in severing the local relationships and partnerships with the communities and introduce additional hierarchy that could be problematic.
- Moving this section to session law and not codifying it, and sunseting it in 2029, demonstrates a lack of commitment to continue to fund more than one pre- or post-charge diversion program per county beyond 2029.
- As noted above, all CJs currently funded by DOC should have the ability to continue doing the valuable work that we are doing.