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## PRE-CHARGE PROTOCOL Juvenile and Adult Referrals

**Background:** Vermont has long had a statutory policy of reliance on restorative justice approaches to criminal conduct. See 28 VSA 2a. Vermont statute has also implemented Court Diversion programs dating back at least to the 1980s.<sup>1</sup> Since the effective date of Act 61 of the 2017 legislative session, Vermont statute has created a functional presumption of diversion for expungement-eligible offenses for first or second nonviolent misdemeanors or felonies.<sup>2</sup> Act 180 of the 2024 legislative session created a statutory framework for Pre-Charge<sup>3</sup> restorative justice referrals by law enforcement officers and prosecutors. Act 180 requires State's Attorneys to create and publicly post policies regarding the use of these programs. In Rutland County, the Pre-Charge program is administered by BROCC Community Action.

**Overview:** The creation and posting of this protocol is designed to address the requirements of Act 180. Where appropriate, the use of Pre-Charge serves as a means of just case resolution without creating a criminal record. Both juveniles and adults are eligible to be referred to the Pre-Charge program. This Pre-Charge Protocol is not a mandate or a directive to make Pre-Charge referrals. The protocol is designed to empower officers to use, where appropriate, an expanded set of available responses to respond to criminal or delinquent acts to achieve the best public safety outcomes for a particular case. The decision to refer a case to Pre-Charge or to refer it for prosecution should be based on the totality of the circumstances and is left to the discretion of the officer and their supervisor(s). Rutland's Pre-Charge Program follows restorative justice principles and is designed to provide a swift and meaningful response to crime and delinquency cases. If a Pre-Charge referral results in non-success /non-completion, BROCC will promptly return the case to the investigating officer to initiate a prosecution.

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<sup>1</sup> While the statutes have been renumbered by earlier acts of the legislature, the current iterations of the relevant statutes are found at sections 163 and 164 of title 3.

<sup>2</sup> Prosecutors "shall provide ... opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice." 3 V.S.A. § 164.

<sup>3</sup> The term "community referrals" is also used to describe pre-charge referrals. For the sake of clarity, this document will use the term "Pre-Charge."

The use of the term "Pre-Charge" also reflects this protocol's choice to only encompass instances for which there would be probable cause to support a criminal prosecution or action in juvenile court. To the extent that "community referrals" are or could be construed to encompass additional behaviors (i.e., problematic behaviors for which there is not probable cause for a prosecution), this protocol explicitly rejects such a practice.

**Eligible Offenses:** The following offenses are eligible for referral to the Pre-Charge program without consultation with the Rutland County State's Attorney's Office only if this is not the person's second or subsequent offense and is not disqualified by the ineligibility factors enumerated in this Protocol:

- Minor (Under age 16) Possession of alcohol or marijuana - provided there was no intent to sell and the juvenile's consumption was low and it did not involve a gathering of juveniles consuming alcohol;
- Conflicts from school such as harassment or bullying;
- Excessive Speed if the defendant is under 18 and a civil violation is issued;
- Misdemeanor Retail Theft cases under \$250;
- Unlawful Mischief < \$500;
- Petit Larceny;
- Disorderly conduct;
- Simple Assaults; and
- Misdemeanor Domestic Assault where the perpetrator and victim **are not** intimate partners. (i.e., a referral is acceptable where the relationship involves siblings or roommates).

\*Other minor offenses not listed above **may** also be considered. Officers should seek prior approval of the State's Attorney or one of their Deputies.

**Ineligibility Factors:**

- Perpetrator's unwillingness to participate in Pre-Charge;
- Perpetrator does not take responsibility for their unlawful conduct;
- Perpetrator's conduct poses an ongoing public safety risk;
- Perpetrator's conduct includes elements of controlling or manipulative behavior of a vulnerable victim, domestic violence, or sexual violence;
- Perpetrator's conduct would be eligible for hate-crime enhancement;
- Perpetrator's offense history shows this is a second or subsequent offense; and/or
- Victim's perspective on the use of Pre-Charge.

**Procedure:**

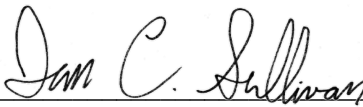
- After law enforcement conducts an investigation of the incident and determines that (1) probable cause exists to charge the offense and (2) it meets the *Pre-Charge Protocol*, the officer may offer an individual the opportunity to participate in the Pre-Charge program. An information sheet about the Pre-Charge program will be provided.
- If the individual agrees to participate in the Pre-Charge program, the officer will submit referral paperwork as soon as possible (Referral Form and Police Report/Affidavit).<sup>4</sup> All minors under the age of 18 need parent or guardian consent to participate in the Pre-Charge program.
- Per Act 180, the referral must include the following information:
  - In the case of an adult who has committed a criminal act that is eligible for the Pre-Charge Program, their name; or
  - In the case of a juvenile who has committed a criminal act that is eligible for

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<sup>4</sup> A copy of the current referral paperwork is appended to this protocol for reference.

- the Pre-Charge Program, the juvenile's name and the name of their parent(s) or legal guardian(s); and
- Where applicable, the name and contact information (telephone, mailing address, and email) of the victim or victims; and
  - An affidavit of probable cause.
- If the individual successfully completes the Pre-Charge Program, Pre-Charge will notify the officer and the case will be closed. If the referral results in a successful completion, RCSAO may maintain records as allowed by law.
  - If the individual does not successfully complete the Pre-Charge Program, the case will be returned to the investigating officer for referral to the State's Attorney's office.
    - The case may also be sent back to the investigating officer if:
      - the individual does not take responsibility for the offense or denies the charge.
      - it is determined through a YASI pre-screen that the juvenile is deemed high-risk or has underlying mental health or other special needs
  - The State's Attorney or one of their Deputies may at any time and in their sole unreviewable discretion direct that a case be withdrawn from the Pre-Charge Program.
  - If the case is returned to the investigating officer from Pre-Charge, the investigating officer will take the appropriate steps to refer the matter for prosecution.
  - **Pre-Charge Referrals can be made by:**
    - a. Calling the reparative panel coordinator at (802) 665-1797 and
    - b. Deliver the paperwork by either
      - a. Emailing paperwork to [rccjc@broc.org](mailto:rccjc@broc.org) **Or**
      - b. Delivering or mailing paperwork to: RCCJC 45 Union St. Rutland, Vt. 05701

This protocol is approved and adopted at Rutland, Vermont, this 21st day of October 2024.

By:   
Ian C. Sullivan  
State's Attorney



## Partner Agency Referral Form

Please submit the completed form to the Rutland County Community Justice Center (RCCJC). If you would like to discuss an incident or case before completing a referral, or if you need assistance filling out the form, please contact the RCCJC at (802) 665-1731.

Forms may be emailed to: [rccjc@broc.org](mailto:rccjc@broc.org)

**Participant First Name:** \_\_\_\_\_ **MI** \_\_\_\_\_ **Last Name:** \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Apt. #: \_\_\_\_\_

City, State, & Zip Code: \_\_\_\_\_

Preferred Phone: \_\_\_\_\_ Alternative: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Email: \_\_\_\_\_

Is the individual responsible for causing harm willing to participate in the Restorative Justice process? **YES**  **NO**  **If yes, participant\* signature:** \_\_\_\_\_

*\*If under 18, parent or guardian signature:* \_\_\_\_\_

Harmed Person's First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Apt.# \_\_\_\_\_

City, State, & Zip Code: \_\_\_\_\_

Preferred Phone: \_\_\_\_\_ Alternative: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Email: \_\_\_\_\_

Does the harmed party consent to the restorative justice referral? **YES**  **NO**

Is the harmed person(s) willing to participate in the Restorative Justice process? **YES**  **NO**

What outcomes are desired from this referral? (e.g., apology, community service, reconciliation, education, restitution): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Referring Agency:** \_\_\_\_\_ **Contact Person:** \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Case Number: \_\_\_\_\_

Type of Offense (e.g., theft, vandalism, assault): \_\_\_\_\_





**Affidavit of Probable Cause attached: YES  NO**

Any known risks or safety concerns? (e.g., restraining orders, ongoing investigations):

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Additional Involved Parties (if applicable): \_\_\_\_\_

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Signature of Referring Officer or Prosecutor: \_\_\_\_\_

Printed name of Referring Officer or Prosecutor: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE:

- AS ALLOWED BY LAW, THIS DOCUMENT MAY BE MAINTAINED AND KEPT BY THE OFFICE OF THE RUTLAND COUNTY STATE'S ATTORNEY PURSUANT TO RULINGS OF THE UNITED STATES SUPREME COURT IN *BRADY* AND *GIGLIO*, THE VERMONT RULES OF PROFESSIONAL CONDUCT, AND THE VERMONT RULES OF CRIMINAL PROCEDURE.
- AS ALLOWED BY LAW, IF THE PARTICIPANT IS SUCCESSFUL IN COMPLETING PROGRAMING, RECORDS MAY BE MAINTAINED BY THE OFFICE OF THE RUTLAND COUNTY STATE'S ATTORNEY, NOTING SUCCESS, TO ASSIST IN FUTURE REFERALLS AND THE AFOREMENTIONED RULES (BRADY/GIGLIO ETC.)
- AS ALLOWED BY LAW, IF THE PARTICIPANT IS NOT SUCCESSFUL THE ENTITY IN RECEIPT OF THE REFERRAL IS RESPONSIBLE FOR PROMPTLY INFORMING THE REFERRING ENTITY (LAW ENFORCEMENT OR THE STATE'S ATTORNEY).

