

Department of State's Attorneys & Sheriffs
David J. Cahill, Executive Director

PRE-ARRAIGNMENT ALTERNATIVE JUSTICE PROGRAMS IN VERMONT

October 1, 2015

This report is made pursuant to Section 4(b) of Act 195 of 2014 which requires the following: *“On or before October 1, 2014, and annually thereafter, the Executive Director of the Department of State’s Attorneys and Sheriffs shall report to the General Assembly detailing the alternative justice programs that exist in each county together with the protocols for each program, the annual number of persons served by the program, and a plan for how a sequential intercept model can be employed in the county. The report shall be prepared in cooperation with the Director of Court Diversion, a co-chair of the Community Justice Network of Vermont, and State, municipal, and county law enforcement officials.”*

SUMMARY: Pre-arraignment alternative justice programming is currently offered by members of the Community Justice Network of Vermont (CJNVT), Diversion, Chittenden County Rapid Intervention Community Court (RICC), and the nascent Act 195 Pretrial Monitoring Program (PTMP). A significant barrier to the spread of this programming in FY15 was the termination of pilot funding for programs modeled on RICC outside of Chittenden County, and the decision to render pre-charge programming a secondary function of the PTMP without a dedicated funding source or predetermined deployment schedule. This Report recommends dedicated funding for pre-charge programs, the creation of a statewide best practice plan for pre-arraignment referrals, the statutory clarification of victim rights in alternative justice programs, and the creation of a statewide council on uniform restorative justice practices.

A. Qualifications

This Report is limited to institutionalized programs that generally address cases prior to arraignment. These include: 1) cases referred by law enforcement agencies to CJNVT’s twenty Community Justice Centers prior to filing the charge with the State’s Attorney and cases referred by State’s Attorneys prior to filing the charge in court; 2) cases from the Chittenden County Rapid Intervention Community Court (RICC), referred by the State’s Attorney or police prior to filing the charge in Court; 3) cases referred by the State’s Attorneys to the fourteen Diversion

Programs, after filing a charge but prior to arraignment; and 4) Pre-Charge Programming offered by the State's Attorneys in cooperation with the Act 195 Pretrial Monitor Program (PTMP). The PTMP is currently in the process of a statewide deployment, and FY16 will be the first year for which annual data can be reported.

This Report does not include other alternative justice programs such as the Adult Treatment Courts that do not address cases prior to arraignment, nor does it consider a variety of other alternative justice programs provided by members of the Community Justice Network of Vermont (CJNVT). These include education, prevention, and community mediation programs, programs serving defendants post-arraignment but pre-conviction, post-conviction without probation, and post-conviction with probation. Likewise, not included in this report are Restorative Reentry Programs offered by CJs, such as COSA, Reparative Reintegration, or Family Reintegration Conferences. Finally, this Report does not include pre-arraignment resolutions that have not been institutionalized through a program or protocol.

An additional caveat to this Report is that FY15 was a "gap year" by which many of the RICC pilot programs outside Chittenden County had ceased to function for lack of funding, but during which pre-charge programming through Act 195 Pre-Trial Monitors had yet to commence on a statewide basis.

B. Community-Based Restorative Justice Programs

The Community Justice Network of Vermont ("CJNVT") is a non-profit (501(c)(3)) made up of 20 Community Justice Centers and Community Justice Programs statewide. For a list of member agencies, visit <http://cjnvt.org>. The CJNVT works to broaden and strengthen community justice and restorative practices through leadership, advocacy, and education. In partnership with the Department of Corrections (DOC), municipalities, and communities across Vermont, the CJNVT supports the delivery of services to youth at risk, victims, communities affected by crime, and those responsible for criminal offenses through twenty member Community Justice Centers (CJs). The member organizations accept direct referrals from police and State's Attorneys, and work with probation and parole to involve communities through programs like reparative probation and others designed to support successful offender re-entry into communities across Vermont. Through intensive support services related to employment, housing, mentoring, and pro social leisure activities, CJNVT members promote individual accountability and work to obtain reparation to victims for the harm they have suffered.

In FY 2015, CJNVT member sites took on 1819 new referrals and involved more than 641 community volunteers who together worked more 21,230 hours. What follows is a table setting forth the services rendered by CJNVT in FY15. The columns pertaining specifically to pre-charge programming are labeled "Pre Charge" and "RICC." "Pre Charge" refers to direct pre-charge referrals (454) from law enforcement and prosecutor entities. "RICC" refers to

collaboration (235) with the State’s Attorneys’ Rapid Intervention Community Court (RICC). This latter category is an example of discrete pre-charge programming entities working together to provide client services.

Table 1 – Referred Cases to CJNVT Member Organizations By County (FY 2015)¹

County	Referrals	Referral Type						
		School	Pre Charge	RICC	Rep w/Prob	Rep w/o Prob	Civil	Other
Addison	41	0	0	0	9	32	0	0
Bennington	121	45	0	0	39	37	0	0
Caledonia	132	1	43	0	56	28	4	0
Chittenden	741	20	280	213	105	4	111	8
Franklin / Gl	153	3	0	0	89	61	0	0
Lamoille	96	0	15	7	70	2	2	0
Orleans	57	0	4	0	36	17	0	0
Orange	10	2	0	0	3	5	0	0
Rutland	43	0	1	8	21	13	0	0
Washington	253	10	80	0	59	87	17	0
Windham	85	0	13	7	16	31	18	0
Windsor	87	0	18	0	24	40	1	4
Totals	1819	81	454	235	527	357	153	12

The CJNVT has engaged in three recent initiatives in the last year to improve its services, demonstrate cost effectiveness, and streamline data collection and reporting. The first is CJNVT Accreditation, which is a Quality Assurance program designed in partnership with member organizations, Department of Corrections staff, former Community High School personnel, and former Department of Corrections commissioner John Gorczyk. This process began in 2014 and CJNVT hopes to complete five accreditations by December 31, 2015, and the remaining member organizations by 2018. This process will result in improved programs and more consistent service delivery among CJNVT member organizations.

The second initiative is a Cost Comparison Evaluation to be conducted by the Crime Research Group (CRG). Building on previous external reports conducted by the Vermont Center for Justice Research (VCJR), and the University of Vermont (UVM), this report will compare the costs of programs run by CJNVT member organizations with similar programs run by state agencies. The CJNVT is committed to future external comparative evaluations. These evaluations will test, build on, and allow CJNVT to better integrate what is known about effective community and restorative justice programming to reduce recidivism, respond to

¹ Compiled by Johannes Wheeldon based on data collected by the Department of Corrections from CJs. Please note: some CJs operate in more than one county based on local needs, relative geography, or established AHS districts.

victims, and save taxpayer dollars.

Third, the CJNVT in partnership with DOC has entered into a contract for the development of a new database to provide more detailed analysis and reporting about the clients, victims, and communities served by our membership. This database, *Kaleidoscope*, will offer automated access to state agencies and capture a broad range of data on offenders, victim services, and volunteers, as well as local collaborations. It will include customizable modules to serve the needs of each member organization, and be able to quickly respond to requests from State agencies.

Finally, in response to a specific request for a report to the Joint Committee on Corrections Oversight in Section E.338 of the FY 2014 Budget, CJNVT has participated in a number of working groups over the last two years. One group was tasked with proposing a seamless delivery system that provides restorative justice services for appropriate cases. A second group outlined in detail practical steps, including possible structures and funding, that might be taken to support such a delivery system. The CJNVT remains committed to developing strategies for regional collaborations to advance restorative justice throughout Vermont and looks forward to the adoption of previous recommendations and the allocation of funding required to strengthen the coordination of and increase access to community-based restorative justice services.

Through the Collaboration Committee (formerly the Steering Committee), representatives of CJNVT and VACDP have agreed to develop mechanisms to make recommendations to collaborate on projects, share information, training opportunities, and cooperate to expand access to restorative justice programs. Despite the distinct and discrete nature of its constituent existing programs and services, this Committee has sought to demonstrate the benefits of a restorative justice response to crime and harm, streamline the referral process, and encourage best practices within its respective agencies. This work continues.

C. Diversion

The Vermont Association of Court Diversion Programs (VACDP) is the member organization of Vermont's fourteen court diversion programs. Its mission is to engage community stakeholders in responding to the needs of crime victims, the community, and those who violated the law, holding the latter accountable in a manner that promotes responsible behavior. VACDP members operate three programs: Court Diversion, the Youth Alcohol Safety Program, and the Civil DLS Diversion Program. VACDP's member agencies vary in scope and size; some encompass exclusively Court Diversion programs and others operate as part of a larger "umbrella" agency. For a list of member agencies, visit www.vtcourtdiversion.org. VACDP is a non-profit (501c3) organization designed to promote community-based balanced and restorative justice through effective and creative program services. The association has developed program standards and monitors members' adherence to those standards, in partnership with the Attorney General's Office. Funding to support these programs includes grants from the Attorney General's Office, client fees, and local financial support.

i. Court Diversion

Vermont law (3 VSA §§163-64) outlines the Court Diversion program. Each State's Attorney, in cooperation with the county program, has developed criteria for the types of offenses and offenders eligible for Diversion; however, the State's Attorney retains final discretion over the referral of each case. Charges referred to Diversion typically include first-time low-level misdemeanors and felonies, in addition to delinquencies filed in Family Division. Individuals who have previous charges or convictions may be referred in some counties. Diversion accepts only persons against whom charges have been filed and the Court has found probable cause but who are not yet adjudicated.

Participation in Diversion is voluntary and participants must accept responsibility for their actions. Defendants referred to Diversion meet with community members to develop an agreement regarding how to repair the harm caused and address the underlying reasons for the offense. Victims have the opportunity to participate in the process to the degree they desire. Agreements made in the community restorative panel meetings often include restitution payments to the victim, participation in counseling or substance use treatment, letters of apology, and other actions to rebuild trust. Diversion cases are confidential. Upon successful completion, the State's Attorney dismisses the charge, and two years later, provided the State's Attorney does not object, the Court orders the case to be sealed. If a person fails Diversion, the case is returned to the State's Attorney for prosecution.

ii. Youth Substance Abuse Safety Program

VACDP'S Youth Substance Abuse Safety Program (YSASP) provides an alternative to the civil court process for youth who violate Vermont's underage alcohol or marijuana laws, as directed by 7 VSA §656 and 18 VSA §4230b. Law enforcement refer youth to the program.

YSASP helps young participants understand the impact on themselves and others of using substances and to lower their risk of future use, while connecting those identified as using at high-risk levels to professional substance use clinicians. Key components of the program are 1) screening for the likelihood of an individual having a substance use problem and 2) using information provided by the youth to engage with him/her in a brief educational intervention, designed to raise the young person's awareness of the risks of substance use and reduce his/her risk of harm. Youth who are found to be at higher risk for substance use meet with a licensed substance use clinician for an assessment. Youth who do not complete the program are issued a civil violation, which may be contested through the Vermont Judicial Bureau. Tickets of successful participants are voided.

iii. Civil DLS Diversion Program

The Civil DLS Diversion program, established by Act 147 (2011, Adjourned Session) helps individuals whose drivers' licenses remains suspended because of unpaid fines obtain reinstatement of their licenses to drive as they pay off their debt to the State. Participants work with Diversion staff to develop a contract including a payment plan that is presented to the Vermont Judicial Bureau (VJB) for review. Upon approval by VJB Hearing Officer, the Department of Motor Vehicles (DMV) is notified that the person is in compliance with the VJB. DMV reinstatement requirements must also be met before the person's driver's license is reinstated. Participants may be eligible for a reduction in what they owe depending on their financial situation and may satisfy some of their debt by completing community service or an educational program. Diversion staff help participants navigate the system: they gather and reconcile information from the Vermont Judicial Bureau (VJB) and the Department of Motor Vehicles (DMV), prepare the necessary documents and legal filings for the VJB, connect participants to community supports, and gather and forward payments and certification of community service to the VJB.

Table 2: FY15 statistics for Court Diversion, YSASP and DLS Diversion are listed below by county:

COURT DIVERSION	AN	BN	CA	CN	EX	FN	GI	LE	OE	OS	RD	WN	WM	WR	Total
Youth	45	41	15	40	1	37	2	15	15	5	34	43	41	37	371
Adults	48	101	55	234	9	269	13	51	41	39	111	193	60	121	1,345
YSASP															
Tickets handled	179	165	135	964	10	111	6	156	99	91	297	156	194	188	2,751
DLS															
Persons assisted	23	122	67	139	8	87	3	33	9	63	109	91	73	27	854
TOTAL	295	429	272	1,377	28	504	24	255	164	198	551	483	368	373	5,321

D. State's Attorney's Rapid Intervention Programs

In September, 2010, Chittenden County State's Attorney T.J. Donovan and other stakeholders developed a pre-arraignment program called the Rapid Intervention Community Court or "RICC" Program. RICC began operation as a collective response by the Chittenden County State Attorney, County Law Enforcement and the Burlington Community Justice Center to address the root causes of criminal behavior. The goal of RICC is to screen appropriate cases,

conduct a risk/need assessment, and divert the case by linking the individual to the appropriate social service agency. RICC seeks to lower barriers to services and access treatment in an efficient and effective manner. RICC personnel provide support to the individual during the pendency of treatment plan by communicating with the participants and providers and ensuring compliance. Upon successful completion of the proposed agreement by the parties, the Chittenden County State's Attorney's Office "CCSA" will not file the criminal charge. The goal is twofold: enhance public safety by addressing the root cause of criminal behavior thereby preventing future crimes and saving taxpayer money.

The appropriateness of cases referred depends on the nature of the criminal charge. Cases that are automatically ineligible for referral are sex offenses, intimate domestic violence offenses, drug dealing/selling offense, violent offenses, to include but not limited to aggravated assaults, assaults & robbery, burglary, embezzlement and driving offenses. There are no exclusions for age or prior criminal record. Screening for mental health is done to ensure competency to complete the RICC program or whether more intensive services are required. All cases referred are done so at the sole discretion of the CCSA office.

The CCSA considers service providers an equal partner in its effort to make a Chittenden County a safe and vibrant community. In order to lower barriers to access services and maximize treatment options, RICC seeks to bring the "community" into the courthouse by creating embedded services that are comprehensive and immediately accessible. RICC uses the Ohio Risk Assessment System ("ORAS"). The ORAS is a validated risk assessment tool and is used to make informed, evidence-based decisions regarding eligibility and appropriateness of services.

A preliminary study done by the Vermont Center for Justice Research showed that, out of the first 674 participants in the Chittenden RICC program, only 7.4% were reconvicted of a crime after successfully completion of the program. To date RICC has seen more than 1785 clients. In FY15, Chittenden RICC handled cases involving 346 individuals.

Between 2010 and 2014, pre-charge programs modeled after Chittenden RICC were deployed by State's Attorneys in Addison, Lamoille, Rutland and Windham Counties using pilot funds. When the funding disappeared, so did the programs. By the end of FY15, Chittenden was the only RICC-style program remaining in operation. It is the State's Attorneys' understanding that the gap created by the disappearance of RICC pilot funding is intended to be filled by pre-charge programming organized in collaboration with the Act 195 Pre-Trial Monitoring Program (PTMP). Because the PTMP was in the process of being deployed in FY15, it is simply too early to tell whether the gap has been filled.

E. Pre-Charge Programming Under the Auspices of the Act 195 Pretrial Monitoring Program (PTMP)

2014 Vermont Laws 195 (“Act 195”) established the Pretrial Monitor Program (PTMP) to provide standardized risk screening and needs assessment information to criminal court judges at the time of arraignment to better inform decisions regarding pretrial conditions of release, bail, and detention status. Act 195 contemplated that each court would have a Pretrial Monitor (PTM) who would not only complete the aforementioned pre-arraignment screening and assessment, but also work with the defendant during the time between arraignment and trial to address identified areas of need and monitor compliance with court-ordered conditions. Additionally, Act 195 intended that the PTMs be made available to administer pre-charge alternative justice programming on behalf of the State’s Attorneys. Either by design or omission, Act 195 did not provide any specific programmatic guidance or funding for the development of State’s Attorney-based pre-charge programming.

FY15 was a transition year during which the PTMP was partially deployed and several PTMs were hired (the details of the PTMP deployment are beyond the scope of this report). Recognizing that the primary function of the PTMP is *pretrial services for the court*, in many instances the secondary function of establishing PTM-based pre-charge programming had not yet been realized in FY15. That said, the State’s Attorneys and PTMP have made significant progress in establishing the necessary groundwork for pre-charge programming. The State’s Attorneys and PTMP collaborated in FY15 to promulgate model guidelines, model participant contracts, and model MOUs for individual county pre-charge programs. The model guidelines recognize the PTM’s role as the “hub” of the pre-charge program, with the potential to refer clients to community partner “spokes” to address areas of need identified by the same standardized screening and assessment tools used in the pre-trial program.

F. Sequential Intercept Model

The sequential intercept model provides a framework to organize strategies to link individuals with necessary services at intercept points in the criminal justice system. At present, members of CJNVT provide community-based programs and services at every intercept point. The programs described in this report occupy the intercepts prior to arraignment, including the initial contact with police and the initial review by the prosecutor. Vermont’s long-term goal should be to develop a robust, statewide alternative justice infrastructure, so that at any intercept-point in the system, from initial police contact through post-judgment, the individual has access to the appropriate programming via a seamless integrated system. This will lead to the most efficient and effective outcomes for the criminal justice system.

Assuming that the FY15-FY16 rollout of the PTMP is successfully implemented (the validity of that assumption is beyond the scope of this report), the State is poised to have strong, statewide coverage of the sequential intercept model through the point of arraignment. A significant but undoubtedly positive “problem” looming on the horizon is the need to educate police, prosecutors, defense attorneys, clinicians, and judicial officers about the full range of pre-charge and pre-arraignment providers (Diversion, Community Justice Centers, RICC, PTMs), the services that each provider offers, and when it is appropriate to make a referral to one provider versus another.

G. Recommendations

This Report makes the following recommendations:

- If the General Assembly intends for the State’s Attorneys to offer additional Pre-Charge Programming through the PTMs (beyond existing pre-arraignment programming available from other providers), the Legislature should specifically define the scope of the programming and provide an appropriation dedicated to that purpose based on testimony from the State’s Attorneys, CJNVT, Diversion, and PTMP.
- The CJNVT and VACDP workgroup that currently exists (The Scaling Up Restorative Justice (SURJ) Workgroup) should work with State’s Attorneys and PTMP to create a statewide best practice guide for pre-arraignment referrals, ensuring appropriate referrals, non-duplicative services, and access for all.
- The General Assembly should establish a single, statewide restorative justice council to provide leadership, coordination, and standardization to Vermont’s restorative justice programming, including pre-charge programming. This council should also specify best practices regarding the retention, protection, and dissemination of confidential information gleaned during the programming process, and make recommendations to the General Assembly regarding any statutory changes necessary to strike the appropriate balance between confidentiality and transparency.
- The General Assembly should define the scope of crime victim rights in restorative programming, including pre-charge programming. This should include a remedy in the event a victim’s rights are violated.