



**Report to the Vermont Legislature
On Court Diversion and Pretrial Services
In Accordance with [13 V.S.A. § 7554c\(f\)](#) and [3 V.S.A. § 164\(d\)](#)**

Submitted to: General Assembly

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I. Services Provided

Needs Screening & Risk Assessment [13 V.S.A. § 7554c](#)

Pretrial Services staff offer needs screenings and, upon the request of a judge, risk assessments 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. For example, if a screening suggests a person is struggling with substance use, a judge may issue a Pretrial Services order including that the person meet with a counselor for a clinical assessment. Needs screenings direct the focus of Pretrial Service Coordinators' work with individuals.

Pretrial Services [13 V.S.A. § 7554c](#)

Pretrial Services are provided to people aged 18 and older with substance use or mental health treatment needs who are going through the court process and awaiting final case resolution in either Family or Criminal Division of Superior Court. Judges order defendants to work with Pretrial Services; however, a person's refusal to engage cannot result in a violation of conditions of release. In addition, individuals may choose to engage with Pretrial Services without a Court order. Pretrial Service Coordinators quickly connect people to substance use, mental health, and other supportive community-based services.

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

This restorative justice program is for youth with a delinquency petition, Youthful Offenders, and adults charged with a crime and referred by a prosecutor. A person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) is not eligible for Court Diversion. Only prosecutors may refer cases to Diversion. 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, and records are expunged two years later.

Tamarack Program [3 V.S.A § 164\(b\)\(2\)](#)

This restorative justice program, based on the second purpose in the Court Diversion statute, is for people aged 18 and older charged with a delinquency or crime who have a substance use or mental health treatment need regardless of their criminal history. Program staff 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, and records are expunged two years later.

FY 2023 Data

Pretrial Services

Judges continue to increase their use of Pretrial Services (PTS). Approximately 1,400 defendants received orders to engage with PTS during FY 2023, 498 more than in the previous year. Approximately 20% of defendants ordered to work with PTS were charged with a felony. [See table on page 6.](#)

Many discussions in the Vermont Judiciary Commission on Mental Health and the Courts sub-committees focused on the work of PTS and how these services could play a larger role to support defendants. Limited capacity both of PTS and their community partners constrain this opportunity.

Adult Diversion and Tamarack

Data on referrals to Adult Court Diversion and Tamarack for FY 2023, FY 2022, and FY 2021 are summarized in a [table on page 7](#); similar information for Youth Diversion is on [page 8](#). These data do not capture the full picture of Diversion referrals; for example, prosecutors also refer felony cases to Diversion. Approximately 5% of referrals are felony charges. Data limitations have restricted this analysis to using added misdemeanor charges. These data illustrate the important role of Diversion and Tamarack in resolving criminal cases. Diversion of cases to these community restorative justice programs is a standard component of the criminal justice system.

The rate of referral appears to have stabilized after the fluctuations associated with the effects of the pandemic on the criminal justice system. During the past three years, Diversion and Tamarack referrals represented 20% of all misdemeanors statewide, with some variations in a few counties. This statewide rate remains lower than the few years prior to the onset of COVID. During this time, the number of new misdemeanor charges in Criminal Division also decreased statewide.

Youth Diversion & Youthful Offenders

In FY 2023, 35% of delinquencies filed in Family Diversion were referred to Youth Diversion and 28% of Youthful Offenders were referred to Youth Diversion. This rate is comparable to last year's.

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 or make a direct referral to a pre-charge program (where pre-charge programs exist, which is not in all communities), and prosecutors retain discretion regarding when to file a charge or a delinquency or youthful offender petition. Factors that affect a prosecutor's decision to refer to Diversion or Tamarack include the individual facts of the case, the prosecutor's views on restorative justice for repeat offenders, and their experience working with the county Court Diversion program. While neither defense attorneys nor judges can refer a case to Court Diversion, a defense attorney's

advocacy or a judge’s question regarding why a case has not been referred may lead to a prosecutor’s decision to refer.

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, which are identified below.

Data Caveats

In reviewing data contained in the table on page 7, 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 in the chart 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 docket pending or is already under Department of Corrections supervision, which may be a reason a prosecutor does not refer to Court Diversion.
3. Some State’s Attorneys use pre-charge programs and other types of specialized alternatives where they are available instead of Diversion. These referrals may account for a significant number of cases that are not captured in the 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 or the Court Diversion program.

Race Data

The Attorney General’s Office first started to collect race data as reported by participants in FY 2020. Data on ethnicity is not captured. The [table on page five](#) shows the percentage of referrals to programs by race category for the past two years.

Referrals by Race – Court Diversion and Pretrial Services

In FY 2023, options to name a race not included in the list and not to identify any race were added.

		FY 2023		FY 2022	
Court Diversion: Family Division		Referrals	% of Total	Referrals	% of Total
Delinquencies & YO	Alaskan American	0	0%	0	0%
	American Indian	1	0%	1	0%
	Asian	1	0%	1	0%
	Black or African American	14	4%	11	4%
	Native Hawaiian or other Pacific Islander	0	0%	0	0%
	Other Single Race	3	1%	2	1%
	Self-identified Other	1	0%	NA	NA
	Two or More Races	5	1%	3	1%
	White	261	75%	245	88%
	Chose not to identify / no entry	61	18%	15	5%
Total		347		278	

		FY 2023		FY 2022	
Court Diversion: Criminal Division		Referrals	% of Total	Referrals	% of Total
Court Diversion & Tamarack	Alaskan American	0	0%	0	0%
	American Indian	2	0%	3	0%
	Asian	17	1%	8	1%
	Black or African American	48	3%	42	3%
	Native Hawaiian or other Pacific Islander	3	0%	0	0%
	Other Single Race	15	1%	12	1%
	Self-identified Other	2	0%	NA	NA
	Two or More Races	10	1%	10	1%
	White	1344	88%	1265	89%
	Chose not to identify / no entry	94	6%	76	5%
Total		1,535		1,416	

		FY 2023		FY 2022	
Pretrial Services		Referrals	% of Total	Referrals	% of Total
	Alaskan American	0	0%	0	0%
	American Indian	0	0%	1	0%
	Asian	4	0%	11	1%
	Black or African American	50	4%	30	4%
	Native Hawaiian or other Pacific Islander	0	0%	1	0%
	Other Single Race	13	1%	10	1%
	Self-identified Other	6	1%	NA	NA
	Two or More Races	13	1%	4	0%
	White	949	80%	677	84%
	Chose not to identify / no entry	370	26%	71	9%
Total		1,405		805	

Pretrial Services – Court Orders

	FY 2023			FY 2022			FY 2021		
	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 Services*	PTS as % of New Misd Charges
Addison	285	61	21%	302	87	29%	251	62	25%
Bennington	776	56	7%	668	30	4%	767	19	2%
Caledonia	483	44	9%	524	50	10%	525	11	2%
Chittenden	2,027	525	26%	1,558	268	17%	1,458	197	14%
Essex	74	3	4%	66	3	5%	58	4	7%
Franklin	877	106	12%	921	55	6%	976	34	3%
Grand Isle	78	12	15%	48	6	13%	94	4	4%
Lamoille	571	95	17%	365	99	27%	414	156	38%
Orange	290	54	19%	234	31	13%	328	10	3%
Orleans	584	115	20%	451	68	15%	581	46	8%
Rutland	995	26	3%	755	10	1%	694	6	1%
Washington	1,135	93	8%	1163	91	8%	1,149	96	8%
Windham	808	136	17%	851	109	13%	903	86	10%
Windsor	575	79	14%	713	0	0%	981	1	0.1%
Total	9,558	1,177	12%	8,619	907	11%	9,179	732	8%

New Misdemeanor Charges - data provided by Vt. Judiciary

Other data gathered by AGO from county programs

Adult Court Diversion and Tamarack – Prosecutor Referrals

	FY 2023				FY 2022				FY 2021			
	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	New Misd Charges	Diversion Referrals Criminal Division	Tamarack Referrals	Diversion & Tamarack as % of New Misd Charges
Addison	285	60	19	28%	302	68	16	28%	251	69	15	33%
Bennington	776	140	11	19%	668	139	34	26%	767	225	49	36%
Caledonia	483	40	14	11%	524	58	15	14%	525	68	9	15%
Chittenden	2,027	248	66	15%	1558	98	54	10%	1,458	39	43	6%
Essex	74	10	0	14%	66	5	0	8%	58	2	0	3%
Franklin	877	197	120	36%	921	96	24	13%	976	141	8	15%
Grand Isle	78	17	2	24%	48	9	0	19%	94	15	0	16%
Lamoille	571	144	18	28%	365	108	28	37%	414	94	20	28%
Orange	290	54	5	20%	234	79	3	35%	328	83	11	29%
Orleans	584	104	15	20%	451	86	15	22%	581	70	11	14%
Rutland	995	168	27	20%	755	85	13	13%	694	98	20	17%
Washington	1,135	191	24	19%	1163	236	44	24%	1,149	227	47	24%
Windham	808	41	4	6%	851	55	10	8%	903	40	16	6%
Windsor	575	117	32	26%	713	235	71	43%	981	386	136	53%
Total	9,558	1,531	357	20%	8,619	1,357	327	20%	9,179	1,557	385	21%

New Misdemeanor Charges - data provided by Vt. Judiciary

Other data gathered by AGO from county programs

Youth Court Diversion and Youthful Offenders – Prosecutor Referrals

	FY 2023						FY 2022					
	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	47	16	13	8	28%	50%	42	13	22	2	52%	15%
Bennington	57	23	20	1	35%	4%	63	23	22	1	35%	4%
Caledonia	15	11	2	1	13%	9%	11	15	8	5	73%	33%
Chittenden	103	63	34	28	33%	44%	81	78	15	30	19%	38%
Essex	1	2	1	1	100%	50%	1	2	0	0	0%	0%
Franklin	105	63	46	9	44%	14%	71	52	20	9	28%	17%
Grand Isle	6	6	0	2	0%	33%	1	10	0	5	0%	50%
Lamoille	41	5	20	5	49%	100%	38	5	27	1	71%	20%
Orange	16	5	4	2	25%	40%	27	11	20	3	74%	27%
Orleans	54	17	3	9	6%	53%	27	14	3	2	11%	14%
Rutland	59	12	15	1	25%	8%	24	15	15	0	63%	0%
Washington	95	67	41	10	43%	15%	71	41	42	17	59%	41%
Windham	29	2	12	0	41%	0%	46	9	8	0	17%	0%
Windsor	72	22	33	10	46%	45%	70	31	38	4	54%	13%
Total	700	314	244	87	35%	28%	573	319	240	79	42%	25%

New Delinquency Filings - data provided by Vt. Judiciary

Other data gathered by AGO from county programs