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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: December 2, 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 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. Needs screenings direct the focus of Pretrial Service Coordinators' work with individuals. Since March 2020, these offerings have been limited to phone screenings as allowed by each Department of Corrections facility.

Pretrial Services

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. 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 and adults charged with a crime and referred by a prosecutor. 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 2021 Data

Pretrial Services

Judges continued their use of Pretrial Services ordering a similar percentage of defendants to engage with Pretrial Services as last year. The number of orders declined in FY 2021 compared to FY 2020, reflecting the decrease in misdemeanor cases filed in Criminal Division this past year. It is worth noting that approximately 20% of defendants ordered to work with Pretrial Services were charged with a felony. [See table on page 6.](#)

Adult Diversion and Tamarack

Data on referrals to Adult Court Diversion and Tamarack for FY 2021, FY 2020, and FY 2019 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. Three to five percent of referrals are felony charges.

During FY 2021, the rate of referrals to Court Diversion and Tamarack decreased in most counties. This trend reflects the decline in charges brought by prosecutors. Regardless, Diversion and Tamarack referrals represented 21% of all misdemeanors in FY 2021 and numbered more than those in FY 2017. 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.

Youth Diversion & Youthful Offenders

In FY 2021, over one-third of delinquencies filed in Family Diversion were referred to Youth Diversion and over 20% of Youthful Offenders to Diversion. These rates are somewhat lower than those of FY 2020, during which there was a notable 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 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 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 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.

Race Data

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

Referrals by Race – Court Diversion and Pretrial Services

| Court Diversion: Family Division | | FY 2021 | | FY 2020 | |
|----------------------------------|---|------------|------------|------------|------------|
| | | Referrals | % of Total | Referrals | % of Total |
| Delinquencies & YO | Alaskan American | 0 | 0% | 0 | 0% |
| | American Indian | 1 | 0% | 0 | 0% |
| | Asian | 1 | 0% | 6 | 2% |
| | Black or African American | 9 | 3% | 27 | 8% |
| | Native Hawaiian or other Pacific Islander | 0 | 0% | 0 | 0% |
| | Other Single Race | 3 | 1% | 1 | 0% |
| | Two or More Races | 6 | 2% | 6 | 2% |
| | White | 267 | 90% | 301 | 85% |
| | Unknown | 9 | 3% | 14 | 4% |
| | Total | 296 | | 355 | |

| Court Diversion: Criminal Division | | FY 2021 | | FY 2020 | |
|------------------------------------|---|-------------|------------|-------------|------------|
| | | Referrals | % of Total | Referrals | % of Total |
| Court Diversion & Tamarack | Alaskan American | 0 | 0% | 0 | 0% |
| | American Indian | 3 | 0% | 4 | 0% |
| | Asian | 9 | 0% | 16 | 1% |
| | Black or African American | 41 | 2% | 91 | 4% |
| | Native Hawaiian or other Pacific Islander | 0 | 0% | 0 | 0% |
| | Other Single Race | 15 | 1% | 17 | 1% |
| | Two or More Races | 13 | 1% | 27 | 1% |
| | White | 1833 | 94% | 2155 | 86% |
| | Unknown | 26 | 1% | 209 | 8% |
| | Total | 1940 | | 2519 | |

| Pretrial Services | | FY 2021 | | FY 2020 | |
|-------------------|---|------------|------------|------------|------------|
| | | Referrals | % of Total | Referrals | % of Total |
| | Alaskan American | 0 | 0% | 0 | 0% |
| | American Indian | 0 | 0% | 1 | 0% |
| | Asian | 12 | 2% | 4 | 1% |
| | Black or African American | 38 | 5% | 14 | 2% |
| | Native Hawaiian or other Pacific Islander | 0 | 0% | 0 | 0% |
| | Other Single Race | 7 | 1% | 5 | 1% |
| | Two or More Races | 7 | 1% | 1 | 0% |
| | White | 607 | 83% | 580 | 75% |
| | Unknown | 61 | 8% | 164 | 21% |
| | Totals = | 732 | | 769 | |

Pretrial Services – Court Orders

| | FY 2021 | | | FY 2020 | | | FY 2019 | | |
|--------------|------------------|--------------------|------------------------------|------------------|--------------------|------------------------------|------------------|--------------------|------------------------------|
| | 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 | 251 | 62 | 25% | 293 | 58 | 20% | 359 | 79 | 22% |
| Bennington | 767 | 19 | 2% | 789 | 17 | 2% | 993 | 14 | 1% |
| Caledonia | 525 | 11 | 2% | 424 | 29 | 7% | 553 | 16 | 3% |
| Chittenden | 1,458 | 197 | 14% | 2,495 | 181 | 7% | 3,308 | 164 | 5% |
| Essex | 58 | 4 | 7% | 46 | 7 | 15% | 46 | 2 | 4% |
| Franklin | 976 | 34 | 3% | 1,027 | 60 | 6% | 1,405 | 75 | 5% |
| Grand Isle | 94 | 4 | 4% | 82 | 2 | 2% | 110 | 2 | 2% |
| Lamoille | 414 | 156 | 38% | 428 | 196 | 46% | 385 | 150 | 39% |
| Orange | 328 | 10 | 3% | 261 | 39 | 15% | 374 | 54 | 14% |
| Orleans | 581 | 46 | 8% | 560 | 30 | 5% | 566 | 36 | 6% |
| Rutland | 694 | 6 | 1% | 805 | 15 | 2% | 1,073 | 8 | 1% |
| Washington | 1,149 | 96 | 8% | 1,015 | 83 | 8% | 1,358 | 41 | 3% |
| Windham | 903 | 86 | 10% | 707 | 49 | 7% | 1,052 | 75 | 7% |
| Windsor | 981 | 1 | 0.1% | 602 | 2 | 0.3% | 984 | 13 | 1.3% |
| Total | 9,179 | 732 | 8% | 9,534 | 768 | 8% | 12,566 | 729 | 6% |

New Misdemeanor Charges - data provided by Vt. Judiciary

Other data gathered by AGO from county programs

Adult Court Diversion and Tamarack – Prosecutor Referrals

| | FY 2021 | | | | 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 | New Misd Charges | Diversion Referrals Criminal Division | Tamarack Referrals | Diversion & Tamarack as % of New Misd Charges |
| Addison | 251 | 69 | 15 | 33% | 293 | 96 | 26 | 42% | 359 | 83 | 25 | 30% |
| Bennington | 767 | 225 | 49 | 36% | 789 | 125 | 60 | 23% | 993 | 263 | 92 | 36% |
| Caledonia | 525 | 68 | 9 | 15% | 424 | 67 | 14 | 19% | 553 | 103 | 25 | 23% |
| Chittenden | 1,458 | 39 | 43 | 6% | 2,495 | 448 | 139 | 24% | 3,308 | 809 | 287 | 33% |
| Essex | 58 | 2 | 0 | 3% | 46 | 11 | 4 | 33% | 46 | 7 | 7 | 30% |
| Franklin | 976 | 141 | 8 | 15% | 1,027 | 223 | 20 | 24% | 1,405 | 511 | 65 | 41% |
| Grand Isle | 94 | 15 | 0 | 16% | 82 | 16 | 7 | 28% | 110 | 19 | 6 | 23% |
| Lamoille | 414 | 94 | 20 | 28% | 428 | 98 | 22 | 28% | 385 | 151 | 58 | 54% |
| Orange | 328 | 83 | 11 | 29% | 261 | 111 | 14 | 48% | 374 | 89 | 19 | 29% |
| Orleans | 581 | 70 | 11 | 14% | 560 | 80 | 19 | 18% | 566 | 108 | 28 | 24% |
| Rutland | 694 | 98 | 20 | 17% | 805 | 131 | 67 | 25% | 1,073 | 135 | 197 | 31% |
| Washington | 1,149 | 227 | 47 | 24% | 1,015 | 209 | 84 | 29% | 1,358 | 263 | 135 | 29% |
| Windham | 903 | 40 | 16 | 6% | 707 | 81 | 30 | 16% | 1,052 | 116 | 28 | 14% |
| Windsor | 981 | 386 | 136 | 53% | 602 | 294 | 75 | 61% | 984 | 345 | 194 | 55% |
| Total | 9,179 | 1,557 | 385 | 21% | 9,534 | 1,990 | 581 | 27% | 12,566 | 3,002 | 1,166 | 33% |

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 2021 | | | | | | FY 2020 | | | | | |
|--------------|---------------------|--------------------|---------------------|-----------|--------------------------------|------------------------------|---------------------|--------------------|---------------------|-----------|--------------------------------|------------------------------|
| | 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 | 20 | 10 | 6 | 3 | 30% | 30% | 15 | 17 | 10 | 3 | 67% | 18% |
| Bennington | 95 | 7 | 38 | 0 | 40% | 0% | 111 | 8 | 20 | 7 | 18% | 88% |
| Caledonia | 38 | 24 | 7 | 7 | 18% | 29% | 13 | 6 | 8 | 2 | 62% | 33% |
| Chittenden | 68 | 94 | 9 | 19 | 13% | 20% | 104 | 132 | 46 | 28 | 44% | 21% |
| Essex | 4 | 2 | 3 | 1 | 75% | 50% | 5 | 1 | 3 | 0 | 60% | 0% |
| Franklin | 89 | 39 | 23 | 3 | 26% | 8% | 80 | 31 | 36 | 2 | 45% | 6% |
| Grand Isle | 2 | 7 | 2 | 4 | 100% | 57% | 1 | 4 | 1 | 0 | 100% | 0% |
| Lamoille | 13 | 5 | 9 | 0 | 69% | 0% | 36 | 5 | 16 | 11 | 44% | 220% |
| Orange | 37 | 2 | 19 | 1 | 51% | 50% | 22 | 9 | 6 | 2 | 27% | 22% |
| Orleans | 51 | 18 | 16 | 4 | 31% | 22% | 39 | 22 | 18 | 7 | 46% | 32% |
| Rutland | 55 | 18 | 4 | 0 | 7% | 0% | 59 | 36 | 18 | 1 | 31% | 3% |
| Washington | 84 | 43 | 56 | 9 | 67% | 21% | 78 | 50 | 48 | 14 | 62% | 28% |
| Windham | 56 | 6 | 10 | 0 | 18% | 0% | 34 | 21 | 16 | 0 | 47% | 0% |
| Windsor | 69 | 33 | 30 | 12 | 43% | 36% | 37 | 41 | 27 | 6 | 73% | 15% |
| Total | 681 | 308 | 232 | 63 | 34% | 20% | 634 | 383 | 273 | 83 | 43% | 22% |

New Delinquency Filings - data provided by Vt. Judiciary

Other data gathered by AGO from county programs