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OFFICE OF THE ATTORNEY GENERAL
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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: January 31, 2020

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 risk assessments and needs screenings 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.

Pretrial Services

Pretrial Services are provided to adults 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. Individuals may also choose to engage with pretrial services. Pretrial Service Coordinators quickly connect people to substance use, mental health and other supportive community-based services.

Tamarack Program 3 V.S.A § 164(b)(2)

This restorative justice program is for adults charged with a crime who have a substance use or mental health treatment need regardless of their criminal history. Pretrial Service Coordinators 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.

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. 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.

FY 2019 Data

Pretrial Services

Judges are turning to Pretrial Services more frequently: court orders doubled during the past year. The chart on page 4 shows Pretrial Service orders increasing during the past years from one to three to six percent of misdemeanor filings. It is worth noting, however, that one-quarter of defendants ordered to work with Pretrial Services were charged with a felony.

Adult Diversion and Tamarack

Data on referrals to Adult Court Diversion and Tamarack for FY 2018 and FY 2019 are summarized in a chart on page 5; similar information for Youth Diversion is on page 6. These data do not capture the full picture of Diversion referrals; for example, prosecutors also refer felony cases to Diversion. Statewide, approximately three percent of all referrals were felony charges in FY 2019.

These charts illustrate the important role of Diversion in resolving cases. Diversion and Tamarack are no longer an alternative for a few cases but a standard component of the criminal justice system.

From FY 2018 to FY 2019, statewide referrals to Adult Court Diversion increased 28%; much of this growth stems from prosecutors diverting criminal DLS (Driving Licensed Suspended) charges. Of all cases closed by Diversion in FY 2019, 40 percent involved DLS. These participants have a lower successful completion rate (56%) compared to those referred with other charges (87%); often the high cost of insurance and barriers to participation in IDR (Impaired Driver Rehabilitation Program) limit people's ability to regain their driver's license.

Youth Diversion & Youthful Offenders

In FY 2018, approximately one-third of delinquencies filed in Family Diversion were referred to Youth Diversion; this rose to over a half of delinquencies in FY 2019. In addition, prosecutors referred over ten percent of Youthful Offenders to Diversion last fiscal year.

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 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 FY 2018 / 19 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.

Pretrial Services

	FY 2019			FY 2018			FY 2017		
	New Misd Charges	Pretrial Services*	PTS as % of New Misd Charges	New Misd Charges	Pretrial Monitoring	PTS as % of New Misd Charges	New Misd Charges	Pretrial Monitoring	PTS as % of New Misd Charges
Addison	359	79	22%	388	87	22%	395	56	14%
Bennington	993	14	1%	865	25	3%	925	4	0%
Caledonia	553	16	3%	560	2	0%	633	1	0%
Chittenden	3,308	164	5%	2,961	69	2%	3,564	44	1%
Essex	46	2	4%	69	1	1%	56	0	0%
Franklin	1,405	75	5%	1,262	6	0%	1,097	20	2%
Grand Isle	110	2	2%	103	1	1%	77	0	0%
Lamoille	385	150	39%	339	64	19%	374	10	3%
Orange	374	54	14%	373	34	9%	415	0	0%
Orleans	566	36	6%	558	22	4%	462	10	2%
Rutland	1,073	8	1%	1,191	12	1%	1,254	12	1%
Washington	1,358	41	3%	1,099	5	0%	1,145	2	0%
Windham	1,052	75	7%	1,105	49	4%	1,024	5	0%
Windsor	984	13	1%	907	10	1%	955	0	0%
Total	12,566	729	6%	11,780	387	3%	12,376	164	1%
<i>Preliminary data</i>									

*New Misd Charges - data provided by Vt. Judiciary
Other data gathered by AGO from county programs*

Adult Court Diversion and Tamarack

	FY 2019				FY 2018			
	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	359	83	25	30%	388	68	17	22%
Bennington	993	263	92	36%	865	193	97	34%
Caledonia	553	103	25	23%	560	82	23	19%
Chittenden	3,308	809	287	33%	2,961	646	96	25%
Essex	46	7	7	30%	69	14	5	28%
Franklin	1,405	511	65	41%	1,262	327	32	28%
Grand Isle	110	19	6	23%	103	13	6	18%
Lamoille	385	151	58	54%	339	140	16	46%
Orange	374	89	19	29%	373	70	14	23%
Orleans	566	108	28	24%	558	81	18	18%
Rutland	1,073	135	197	31%	1,191	99	113	18%
Washington	1,358	263	135	29%	1,099	207	114	29%
Windham	1,052	116	28	14%	1,105	136	69	19%
Windsor	984	345	194	55%	907	261	199	51%
Total	12,566	3,002	1,166	33%	11,780	2,337	819	27%
<i>Preliminary data</i>								

*New Misd Charges - data provided by Vt. Judiciary
 Other data gathered by AGO from county programs
 CN Tamarack referrals includes RICC referrals

Youth Court Diversion and Youthful Offenders

	FY 2019						FY 2018		
	New Filings		Diversion Referrals				New Delinquency Filings	Diversion Referrals - Family Div	Diversion as % of New Delinquencies
	Delinquency Filings	Youthful Offenders	Delinquency	YO	Del. Referrals as % of Filings	YO Referrals as % of Filings			
Addison	28	18	16	1	57%	6%	33	10	30%
Bennington	89	7	24	0	27%	0%	131	34	26%
Caledonia	13	15	10	0	77%	0%	19	8	42%
Chittenden	155	119	107	19	69%	16%	199	51	26%
Essex	0	1	0	0	NA	0%	3	3	100%
Franklin	86	76	54	8	63%	11%	98	25	26%
Grand Isle	4	5	4	0	100%	0%	5	0	0%
Lamoille	39	8	18	1	46%	13%	27	18	67%
Orange	26	11	17	3	65%	27%	42	19	45%
Orleans	25	49	14	0	56%	0%	48	22	46%
Rutland	78	26	29	0	37%	0%	93	24	26%
Washington	64	89	34	15	53%	17%	78	30	38%
Windham	54	29	28	4	52%	14%	43	21	49%
Windsor	42	51	36	3	86%	6%	60	37	62%
Total	703	504	392	54	56%	11%	879	302	34%
<i>Preliminary data</i>									

New Delinquency Filings - data provided by Vt. Judiciary

Other data gathered by AGO from county programs