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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: 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

		FY 2021		FY 2020	
Court Diversion: Family Division		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	

		FY 2021		FY 2020	
Court Diversion: Criminal Division		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	

		FY 2021		FY 2020	
Pretrial Services		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