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**Report to  
The Vermont Legislature**

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**Report to the Vermont Legislature  
On Court Diversion and Pretrial Services**

In Accordance with [3 V.S.A. § 164\(d\)](#) and [13 V.S.A. § 7554c\(f\)](#)

**Submitted to:** General Assembly

**Submitted by:** Charity R. Clark, Vermont Attorney General

**Prepared by:** Willa Farrell, Court Diversion & Pretrial Services  
Director, Community Justice Unit  
General Counsel and Administrative Law Division

**Report Date:** December 1, 2024

## Introduction

This report has been prepared in accordance with [3 V.S.A. § 164\(d\)](#) and [13 V.S.A. § 7554c\(f\)](#).

3 V.S.A. § 164(d):

*The Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the General Assembly on services provided and outcome indicators. As a component of the report required by this subsection, the Attorney General shall include data on diversion program referrals in each county and possible causes of any geographical disparities.*

13 V.S.A. § 7554c(f)(2):

*(f) The Attorney General's Office shall:*

*\*\*\**

*(2) develop pretrial services outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the General Assembly on services provided and outcome indicators.*

## Services Provided

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

For individuals lodged and unable to post bail within 24 hours, Pretrial Services staff offer needs screenings. Results of the 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 more formal clinical assessment. Needs screenings direct the focus of Pretrial Service Coordinators' work with individuals. Staff perform risk assessments upon a judge's order, but these are infrequent.

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

Pretrial Service Coordinators quickly connect people to substance use, mental health, and other supportive community-based 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 in either the 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.

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

Diversion case managers work with people referred who are willing to take responsibility for their actions and engage in a restorative process aimed at repairing the harm done. This restorative justice program is for youth with a delinquency petition, Youthful Offenders, and adults charged with a crime. Only prosecutors may refer cases to Diversion. 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. Prosecutors subsequently dismiss the charge of successful participants, and records are expunged two years later if the person has not subsequently been charged with a crime and does not owe restitution.

### **Tamarack Program 3 V.S.A § 164(b)(2)**

This restorative justice program is to assist 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. It is based on the second purpose in the Court Diversion statute (“Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person’s health and reducing future adverse involvement in the justice system.” 3 V.S.A. § 164(b)(2)). 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 if the person has not subsequently been charged with a crime and does not owe restitution.

## **People Served**

The Attorney General’s Office collects self-reported gender and race data, as well as age of individuals referred to Court Diversion and Pretrial Services. Data on ethnicity is not reported.

The chart on page 5 shows the percentage of referrals to programs by race category for the past two years.

A [study](#) by the Crime Research Group in 2022 found the race of people charged with public order and motor vehicle offenses was associated with whether they participated in Court Diversion. However, CRG concluded that because of data availability issues, “it was not possible to build a statistical model capable of determining exactly how race is related to the Court Diversion participation.” (CRG, “Equal Access to Alternative Programs,” Sept. 2022, at 4). No other analysis regarding demographic characteristics and other AGO-funded programs has been done.

Approximately 70% of the victims in cases referred to Court Diversion and Tamarack are individuals. Large corporations comprise 20% of the victims, with small business owners, governmental entities, and other organizations amongst the other types of victims.

## **Services Provided and Outcome Indicators**

### **Pretrial Services**

Judges continue to rely on Pretrial Services (PTS) as do other parties. Often, judges issue PTS orders after a prosecutor requests one, and defense attorneys may refer a client as well. Approximately 1,000 defendants received orders to engage with PTS during FY 2024, similar to the number in FY 2022 but reduced from FY 2023. Approximately 20% of defendants ordered to work with PTS were charged with a felony. (See page 6.)

Many discussions hosted by the Vermont Judiciary’s Commission on Mental Health and the Courts have focused on the work of PTS and how these services could play a larger role to support defendants in accessing treatment and other supports to promote people’s health and limit repeat criminal behavior. Current program capacity of PTS and their community partners limit this opportunity.

Similar issues restrict the collection of meaningful outcome measures.

### **Court Diversion and Tamarack**

Court Diversion and Tamarack benefit individuals, both those charged with crimes or delinquencies, as well as victims, and ease the workload of the formal court system.

Through these programs, victims choose how and with whom they talk about their experience and suggest ideas for the Diversion agreement. Often victims want information and to understand why the person committed the crime. Many victims suggest that the person referred to Diversion engage in services so that others do not suffer the same experience.

In addition, restitution is an important part of repairing harm. During FY 2024, over 1,483 cases were closed successfully; of these, 86 involved the payment of approximately to \$38,000 in restitution paid to victims.

Individuals who complete Diversion successfully avoid a criminal conviction, and the case records are expunged two years later if the individual is not subsequently charged with a crime. Criminal convictions limit people's opportunities for employment, housing and education, and the related stigma causes significant if less tangible damage to people's lives as well. During FY 2024, approximately 86% of youth and 70% of adults completed the program successfully. Fewer adults referred for driving with license suspended (DLS) and to the Tamarack program are successful. (See discussion, below, and chart on page 10.)

Prosecutors in all counties turn to Court Diversion to handle a significant portion of charges filed. Referring cases to Diversion and Tamarack as an alternative to prosecution is a standard component of the criminal and youth justice systems used by prosecutors in all counties. During the past three years, Criminal Division Diversion and Tamarack referrals represented approximately 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. In FY 2024, 38% of delinquencies filed in Family Diversion were referred to Youth Diversion and 30% of Youthful Offenders were referred to Youth Diversion. These rates are slightly higher than FY 2023.

Data on referrals to Adult Court Diversion and Tamarack for the past three years are summarized in a chart on page 7; similar information for Youth Diversion is on the following page. These data do not capture the full picture of Diversion referrals relative to new cases filed in court. Data limitations have restricted this analysis to using new misdemeanor charges (labeled *New Misd Charges* in the charts below). While the law directs prosecutors to provide a person charged with an expungement-eligible misdemeanor the opportunity to participate in Diversion, prosecutors also refer non-expungement eligible misdemeanor (e.g., first-time DUI) and felony cases to Diversion. Approximately 5% of referrals are felony charges.

DLS and Tamarack cases are outliers given some of the challenges specific to individuals engaged in these specific types of programming. The lower successful completion rate of criminal cases involving DLS charges (52%) may reflect financial barriers that most participants face in meeting license reinstatement requirements. The successful completion rate of people referred to Tamarack is similar at 49% and may indicate how individual's needs related to substance misuse, mental health problems, and housing constrain their ability to effectively engage in repairing harm and following program agreements. Still, Tamarack remains a valuable tool in increasing these individuals' engagement in services.

Court Diversion is cost effective. A [cost analysis](#) done by Crime Research Group in 2019 documented that Diversion is much less expensive than the traditional criminal justice system. For example, an assault case resolved through Diversion costs \$216, while a similar case could cost \$1,480 in the traditional system. On average, the cost of resolving Diversion cases is 15 % of the cost of court adjudication.

### **Possible Causes of Geographical Disparities in Referrals**

The rate of referral to Court Diversion and Tamarack varies by county—from a low of 6% of misdemeanor charges in FY 2024 to a high of 45%—for a number of reasons. The rate and type of crime differs 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 may affect a prosecutor's decision to refer to Diversion or Tamarack include the individual facts of the case, the prosecutor's views on Diversion for repeat offenders, and their experience working with the available county program. While neither defense attorneys nor judges can refer a case to Court Diversion, a defense attorney's advocacy or a judge's inquiry regarding why a case has not been referred may influence a prosecutor's decision to refer.

### **Data Caveats**

Specific to the data included in this report, the Department of State's Attorneys has provided several

caveats to explain the different rates of referrals to Diversion and Tamarack.

1. Not all misdemeanor offenses are presumptively eligible for Diversion or Tamarack. The data sources regarding charged misdemeanors, included within this report, capture all misdemeanors charged and 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 (e.g., a related felony charge) or is already under Department of Corrections supervision, which may be a reason a prosecutor does not refer an individual to 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.

## Consulting Partners

- Laura Carter, Division of Racial Justice Statistics of the Office of Racial Equity
- Tim Lueders-Dumont, Legislative & Assistant Appellate Attorney, Department of State’s Attorneys and Sheriffs
- Jennifer Poehlmann, Executive Director, Vermont Center for Crime Victim Services
- Matthew F. Valerio, Defender General

## Appendix

### Referrals by Race – Court Diversion and Pretrial Services

Percentages are rounded to whole numbers.

Court Diversion: Family Division		FY 2024		FY 2023	
		Referrals	% of Total	Referrals	% of Total
<b>Delinquencies &amp; Youthful Offenders</b>	<b>Alaskan American</b>	0	0%	0	0%
	<b>American Indian</b>	0	0%	1	<1%
	<b>Asian</b>	2	<1%	1	<1%
	<b>Black or African American</b>	15	4%	14	4%
	<b>Native Hawaiian or other Pacific Islander</b>	0	0%	0	0%
	<b>Other Single Race</b>	2	<1%	3	1%
	<b>Self-identified Other</b>	0	0%	1	<1%
	<b>Two or More Races</b>	6	2%	5	1%
	<b>White</b>	304	87%	261	75%
	<b>Chose not to identify / no entry</b>	21	6%	61	18%
<b>Total</b>	<b>350</b>		<b>347</b>		

Court Diversion: Criminal Division		FY 2024		FY 2023	
		Referrals	% of Total	Referrals	% of Total
<b>Court Diversion &amp; Tamarack</b>	<b>Alaskan American</b>	0	0%	0	0%
	<b>American Indian</b>	6	<1%	2	<1%
	<b>Asian</b>	22	1%	17	1%
	<b>Black or African American</b>	98	5%	48	3%
	<b>Native Hawaiian or other Pacific Islander</b>	1	<1%	3	<1%
	<b>Other Single Race</b>	30	1%	15	1%
	<b>Self-identified Other</b>	2	<1%	2	<1%
	<b>Two or More Races</b>	24	1%	10	<1%
	<b>White</b>	1821	87%	1344	88%
	<b>Chose not to identify / no entry</b>	86	4%	94	6%
<b>Total</b>	<b>2,090</b>		<b>1,535</b>		

Pretrial Services		FY 2024		FY 2023	
		Referrals	% of Total	Referrals	% of Total
<b>Pretrial Services</b>	<b>Alaskan American</b>	0	0%	0	0%
	<b>American Indian</b>	1	<1%	0	0%
	<b>Asian</b>	9	1%	4	<1%
	<b>Black or African American</b>	37	4%	50	4%
	<b>Native Hawaiian or other Pacific Islander</b>	1	0%	0	0%
	<b>Other Single Race</b>	9	<1%	13	<1%
	<b>Self-identified Other</b>	4	0%	6	<1%
	<b>Two or More Races</b>	7	<1%	13	1%
	<b>White</b>	897	88%	949	67%
	<b>Chose not to identify / no entry</b>	52	5%	370	26%
<b>Total</b>	<b>1,017</b>		<b>1,405</b>		

## Pretrial Services – Court Orders

	FY 2024			FY 2023			FY 2022		
	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	323	45	14%	285	61	21%	302	87	29%
Bennington	797	75	9%	776	56	7%	668	30	4%
Caledonia	481	45	9%	483	44	9%	524	50	10%
Chittenden	2353	283	12%	2,027	525	26%	1,558	268	17%
Essex	73	16	22%	74	3	4%	66	3	5%
Franklin	958	104	11%	877	106	12%	921	55	6%
Grand Isle	57	1	2%	78	12	15%	48	6	13%
Lamoille	413	61	15%	571	95	17%	365	99	27%
Orange	272	73	27%	290	54	19%	234	31	13%
Orleans	617	58	9%	584	115	20%	451	68	15%
Rutland	1027	24	2%	995	26	3%	755	10	1%
Washington	1053	125	12%	1,135	93	8%	1163	91	8%
Windham	945	62	7%	808	136	17%	851	109	13%
Windsor	586	45	8%	575	79	14%	713	0	0%
<b>Total/Avg. %</b>	<b>9,955</b>	<b>1,017</b>	<b>10%</b>	<b>9,558</b>	<b>1,177</b>	<b>12%</b>	<b>8,619</b>	<b>907</b>	<b>11%</b>

*New Misdemeanor Charges - data provided by Vt. Judiciary*

*Other data gathered by AGO from county programs*

## Adult Court Diversion and Tamarack – Prosecutor Referrals

	FY 2024				FY 2023				FY 2022			
	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	323	79	23	32%	285	60	19	28%	302	68	16	28%
Bennington	797	114	9	15%	776	140	11	19%	668	139	34	26%
Caledonia	481	74	14	18%	483	40	14	11%	524	58	15	14%
Chittenden	2353	263	144	17%	2,027	248	66	15%	1558	98	54	10%
Essex	73	11	1	16%	74	10	0	14%	66	5	0	8%
Franklin	958	198	116	33%	877	197	120	36%	921	96	24	13%
Grand Isle	57	17	1	32%	78	17	2	24%	48	9	0	19%
Lamoille	413	167	20	45%	571	144	18	28%	365	108	28	37%
Orange	272	53	7	22%	290	54	5	20%	234	79	3	35%
Orleans	617	134	10	23%	584	104	15	20%	451	86	15	22%
Rutland	1027	166	27	19%	995	168	27	20%	755	85	13	13%
Washington	1053	174	56	22%	1,135	191	24	19%	1163	236	44	24%
Windham	945	44	14	6%	808	41	4	6%	851	55	10	8%
Windsor	586	133	21	26%	575	117	32	26%	713	235	71	43%
<b>Total/Avg. %</b>	<b>9,955</b>	<b>1,627</b>	<b>463</b>	<b>21%</b>	<b>9,558</b>	<b>1,531</b>	<b>357</b>	<b>20%</b>	<b>8,619</b>	<b>1,357</b>	<b>327</b>	<b>20%</b>

*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 2024						FY 2023					
	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	34	12	19	2	56%	17%	47	16	13	8	28%	50%
Bennington	77	34	14	0	18%	0%	57	23	20	1	35%	4%
Caledonia	20	31	0	17	0%	55%	15	11	2	1	13%	9%
Chittenden	96	61	46	18	48%	30%	103	63	34	28	33%	44%
Essex	6	3	0	0	0%	0%	1	2	1	1	100%	50%
Franklin	85	23	34	10	40%	43%	105	63	46	9	44%	14%
Grand Isle	6	3	3	3	50%	100%	6	6	0	2	0%	33%
Lamoille	26	1	15	0	58%	0%	41	5	20	5	49%	100%
Orange	32	11	10	2	31%	18%	16	5	4	2	25%	40%
Orleans	59	20	9	3	15%	15%	54	17	3	9	6%	53%
Rutland	76	17	33	2	43%	12%	59	12	15	1	25%	8%
Washington	94	30	42	17	45%	57%	95	67	41	10	43%	15%
Windham	43	6	10	0	23%	0%	29	2	12	0	41%	0%
Windsor	48	21	32	9	67%	43%	72	22	33	10	46%	45%
<b>Total/Avg. %</b>	<b>702</b>	<b>273</b>	<b>267</b>	<b>83</b>	<b>38%</b>	<b>30%</b>	<b>700</b>	<b>314</b>	<b>244</b>	<b>87</b>	<b>35%</b>	<b>28%</b>

*New Delinquency Filings - data provided by Vt. Judiciary*

*Other data gathered by AGO from county programs*

## Youth and Youthful Offenders Court Diversion – Closures

FY 2024	Family Division - Diversion			Family Division - Diversion – Youthful Offenders (YO)		
	# Closed	# Successful	% Successful	# Closed	# Successful	% Successful
Addison	7	6	86%	16	14	88%
Bennington	15	14	93%	0	0	0%
Caledonia	0	0	0%	8	7	88%
Chittenden	31	30	97%	18	16	89%
Essex	0	0	0%	0	0	0%
Franklin	36	28	78%	10	9	90%
Grand Isle	2	2	100%	3	3	100%
Lamoille	5	5	100%	4	4	100%
Orange	4	3	75%	1	1	100%
Orleans	12	11	92%	3	2	67%
Rutland	28	21	75%	3	3	100%
Washington	40	32	80%	12	10	83%
Windham	9	9	100%	0	0	0%
Windsor	36	29	81%	12	11	92%
Subtotal	<b>225</b>	<b>190</b>	<b>84%</b>	<b>90</b>	<b>80</b>	<b>89%</b>
Unsuccessful		<b>35</b>	<b>16%</b>		<b>10</b>	<b>11%</b>

## Adult Court Diversion – Closures

FY 2024	Criminal Division - Diversion			Criminal Division – DLS charge			Criminal Division - Tamarack		
	# Closed	# Successful	% Successful	# Closed	# Successful	% Successful	# Closed	# Successful	% Successful
Addison	36	25	69%	35	15	43%	15	10	67%
Bennington	70	64	91%	40	30	75%	7	3	43%
Caledonia	49	32	65%	16	9	56%	12	6	50%
Chittenden	256	210	82%	4	2	50%	106	54	51%
Essex	8	5	63%	6	5	83%	1	0	0%
Franklin	78	49	63%	78	37	47%	110	69	63%
Grand Isle	3	2	67%	4	4	100%	1	1	100%
Lamoille	90	82	91%	6	5	83%	4	3	75%
Orange	37	35	95%	11	9	82%	6	4	67%
Orleans	69	55	80%	37	29	78%	4	2	50%
Rutland	84	66	79%	51	26	51%	10	6	60%
Washington	79	62	78%	96	43	45%	33	23	70%
Windham	51	44	86%	2	1	50%	13	4	31%
Windsor	65	56	86%	46	9	20%	22	17	77%
Subtotal	<b>975</b>	<b>787</b>	<b>81%</b>	<b>432</b>	<b>224</b>	<b>52%</b>	<b>344</b>	<b>202</b>	<b>59%</b>
Unsuccessful		<b>188</b>	<b>19%</b>		<b>208</b>	<b>48%</b>		<b>142</b>	<b>41%</b>