

No. 140. An act relating to eligibility for pretrial risk assessment and needs screening.

(S.171)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 7554c is amended to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a)(1) The objective of a pretrial risk assessment is to provide information to the Court for the purpose of determining whether a person presents a risk of nonappearance or a threat to public safety so the Court can make an appropriate order concerning bail and conditions of pretrial release.

(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental health issue that would warrant a subsequent court order for a more detailed clinical assessment.

(3) Participation in a risk assessment or needs screening pursuant to this section does not create any entitlement for the assessed or screened person.

(b)(1) A person whose offense or status falls into any of the following categories shall be offered a risk assessment and, if deemed appropriate by the pretrial monitor, a needs screening prior to arraignment:

(A) misdemeanors and felonies, excluding listed crimes and drug trafficking, cited into court; and

(B) ~~persons cited or arrested for an offense that is not a listed crime who are identified by law enforcement, the prosecution, the defense, probation~~

~~and parole personnel, the Court, a treatment provider, or a family member or friend as having a substantial substance abuse or mental health issue;~~

~~(C) misdemeanor and felony drug offenses, excluding trafficking, cited into court; and~~

~~(D) persons who are arrested and lodged and unable to post bail within 24 hours of lodging, excluding persons who are charged with an offense for which registration as a sex offender is required upon conviction pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by up to life imprisonment.~~

(2) As used in this section, “listed crime” shall have the same meaning as provided in section 5301 of this title and “drug trafficking” means offenses listed as such in Title 18.

(3) Unless ordered as a condition of release under section 7554 of this title, participation in ~~an~~ risk assessment or needs screening shall be voluntary.

(4) In the event an assessment or screening cannot be obtained prior to arraignment, ~~the Court shall direct~~ the risk assessment and needs screening ~~to~~ shall be conducted as soon as practicable.

(5) A person who qualifies pursuant to subdivisions (1)(A)-(D) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime.

(6)(A) The Administrative Judge and Court Administrator, in consultation with the Secretary of Human Services and the Commissioner of Corrections, shall develop a statewide plan for the phased, consistent rollout of the categories identified in subdivisions (1)(A) through (D) of this subsection, in the order in which they appear in this subsection. The Administrative Judge and Court Administrator shall present the plan to the Joint Legislative Corrections Oversight Committee on or before October 15, 2014.

(B) All persons whose offense or status falls into one of the categories shall be eligible for a risk assessment or needs screening on or ~~before~~ after October 15, 2015. Prior to that date, a person shall not be guaranteed the offer of a risk assessment or needs screening solely because the person's offense or status falls into one of the categories. Criminal justice professionals charged with implementation shall adhere to the plan.

(c) The results of the risk assessment and needs screening shall be provided to the ~~prosecutor who, upon filing a criminal charge against the person, shall provide the results to the person and his or her attorney, the prosecutor, and the~~ Court.

(d)(1) ~~In~~ At arraignment, in consideration of the risk assessment and needs screening, the Court may order the person to comply with ~~any~~ of the following conditions:

(A) meet with a pretrial monitor on a schedule set by the Court; and

(B) participate in a clinical assessment by a substance abuse or mental health treatment provider; and follow the recommendations of the provider.

~~(C) comply with any level of treatment or recovery support recommended by the provider follow the recommendation of the pretrial monitor if the person has voluntarily agreed to participate in a risk assessment or needs screening.~~

~~(D), (E) [Repealed.]~~

(2) The Court may order the person to follow the recommendation of the pretrial monitor if the person has completed a risk assessment or needs screening.

(3) If possible, the Court shall set the date and time for the assessment at arraignment. In the alternative, the pretrial monitor shall coordinate the date, time, and location of the clinical assessment and advise the Court, the person and his or her attorney, and the prosecutor.

~~(3)~~(4) The conditions authorized in subdivision (1) of this subsection shall be in addition to any other conditions of release permitted by law and shall not limit the Court in any way.

(e)(1) Information obtained from the person during the risk assessment or needs screening shall be exempt from public inspection and copying under the Public Records Act and, except as provided in subdivision (2) of this subsection, only may be used for determining bail, conditions of release, and

appropriate programming for the person in the pending case. The immunity provisions of this subsection apply only to the use and derivative use of information gained as a proximate result of the risk assessment or needs screening.

(2) The person shall retain all of his or her due process rights throughout the risk assessment and needs screening process and may release his or her records at his or her discretion.

(3) The Vermont Supreme Court in accordance with judicial rulemaking as provided in 12 V.S.A. § 1 shall promulgate and the Department of Corrections in accordance with the Vermont Administrative Procedure Act pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section. Emergency rules adopted prior to January 1, 2015 pursuant to this section shall be considered to meet the “imminent peril” standard under 3 V.S.A. § 844(a).

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 25, 2016