



**STATE OF VERMONT  
OFFICE OF THE FRANKLIN COUNTY STATE'S ATTORNEY**

**POLICY & GUIDELINES: COMMUNITY JUSTICE DIRECT REFERRALS FROM LAW ENFORCEMENT AGENCIES**

Vermont law provides for a statutory framework for "community justice center[s] to resolve civil disputes and address the wrongdoings of individuals who have committed municipal, juvenile, or criminal offenses." Pursuant to 24 V.S.A. § 1964(a)(3) community justice centers (CJCs) "shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote the rehabilitation of youthful and adult offenders."

For persons without substantial criminal history, a State's Attorney may endeavor to resolve cases and alleged criminal conduct with an emphasis on restorative justice. It should be noted that there are a wide range of options and variance in case outcomes. Outcomes and success, or failure, may well depend on the history of involved persons, impacts on victims, and the alleged facts and circumstances of the conduct resulting in law enforcement contact or cause of complaint. A spectrum of options exists, ranging from community justice center (CJC) referrals, either pre-charge or post-charge/post-arraignment, diversion referrals, "Tamarack" referrals, and then the traditional criminal court track. Within the criminal justice system, post-conviction referrals to restorative justice programming or boards offered by CJCs is often utilized as part of deferred or probated sentences.

This policy is one of deference to law enforcement officers in permitting direct CJC referrals at their discretion. This policy memorandum may assist in providing clarity and a framework for law enforcement officers and prosecutors to utilize when contemplating direct referral.

**REFERENCES**

- 24 V.S.A. ch. 58 (Community Justice Centers)
- 3 V.S.A. § 164 (Adult Court Diversion Program)
- 13 V.S.A. § 5301(7) (Listed Offenses)

**FACTORS AND CONSIDERATIONS WHEN CONSIDERING A PRE-CHARGE, COMMUNITY, OR DIRECT REFERRAL TO  
A COMMUNITY JUSTICE CENTER OR OTHER COMMUNITY PROGRAMMING**

Law Enforcement Officers may, at their discretion, directly refer cases to a CJC for disposition when they conclude that such referral will appropriately address the behavior of concern and provide a sufficient form of accountability for the behavior. A fluid and adaptable attitude and lens should be applied.

The following factors are appropriate to consider when contemplating a direct, pre-charge, or community referral:

1. Whether the conduct constitutes an eligible offense (see below for eligibility).
2. Whether the conduct resulted in victim impact.
3. Whether there is any potential for restitution, if so, is the amount less than \$100 dollars.
4. Whether the alleged offender is currently under the supervision of the Department of Corrections. (Offenders who are already under Department of Corrections supervision may be directly referred to a CJC with the agreement of their probation officer in lieu of a violation of probation or sanction for offense behavior).
5. Whether the alleged offender has not previously failed to complete or engage in a CJC program or court diversion within the past 36 months.

The following factors that may weigh in favor of a direct, pre-charge, or community referral:

1. Victim support or direct request for a CJC referral.
2. Criminal or supervisory history supportive of a referral to a court diversion program, if charges were referred for prosecution, e.g. first time offenders or individuals with limited or older criminal histories.
3. Demonstrated amenability to participation in a restorative justice process by the offender.

The following factors that may weigh against a direct referral to a CJC:

1. Conduct violates existing Department of Corrections conditions or court ordered conditions of release.
2. Criminal history (and history of failure or success in prior restorative referral opportunities).
3. Offender lacks the capacity to meaningfully participate in the process, e.g. serious mental diseases or defects, a significant traumatic brain injury, or other developmental disabilities that would render an offender incompetent to stand trial.
4. Prior unsuccessful referral to a CJC for similar conduct, without excuse or justification, or an absence of compelling changes in circumstances.
5. Nature of victim impact or persuasive victim objection to a referral.
6. Substance abuse or mental health concerns that require a higher level of supervision or care and are unlikely to be addressed through a CJC program; Need for conditions of release, pretrial screening, pretrial monitoring, or other pre-adjudication responses from the justice system to protect public safety or public order.
7. Multiple recent contacts with law enforcement for alleged criminal activity, charged or uncharged

Ultimately, common sense notions of justice and fairness should guide referrals.

## **OTHER CONSIDERATIONS AND OPTIONS FOR REFERRAL TO A COMMUNITY JUSTICE CENTER**

If there is uncertainty as to whether a case should be directly referred to a CJC or referred for prosecution, the case should be submitted to the SAO as a review case. Nothing in this policy precludes the SAO from entering the case into a CJC or diversion referral at a later date.

More informally, law enforcement officers may speak with an available attorney in the SAO concerning a potential referral and disposition at or near the time of the incident or arrest. Additionally, cases may be submitted with a recommendation that referral to a CJC or diversion program be made upon filing or following arraignment.

Below, the Franklin County SAO has created a non-exhaustive list of offenses as an example of the type of offenses which may be appropriate to consider a direct referral. This list should not preclude law enforcement from referring other incidents due to law enforcement interaction that would benefit from CJC intervention or assistance. This list is a guideline or example of the types of offenses to consider. That said, law enforcement should, at any time, consult with the SAO for guidance as to a referral.

For example, the following non-exhaustive list of incidents and related conduct may be appropriate for direct pre-charge community programming, once the above considerations are weighed and balanced.

1. Retail Theft <\$25
2. Unlawful Mischief <\$100
3. False pretenses <\$100
4. Possession of Stolen Property <\$100 (so long as not a firearm)
5. Minor in Possession of Alcohol
6. Petit Larceny <\$100
7. Driving While License Suspended for O.S.C. under 23 VSA 674(a)(2).
8. Disorderly Conduct
9. Unlawful Trespass (no damage)
10. Excessive Speed (23 years old and younger)

### **CASES THAT SHALL NOT BE DIRECTLY REFERRED TO A COMMUNITY JUSTICE CENTER**

In the exercise of prosecutorial discretion, some cases may be, as directed by the SAO, presumptively inappropriate for referral. While some conduct may now, or in the future, be permitted by statute, violent offenses and listed offenses should not be directly referred to a CJC without full review by the SAO. The following is a list of offenses that shall not be referred directly by law enforcement:

- 1) Any Felony Offense
- 2) Any "Listed Offense" under 13VSA5301(7)
- 3) Any crime of which an element of the offense involves violence, the threat of violence, harassment, or use of force in the commission of the offense
- 4) Any offense with a sexual motivation
- 5) Any offense against an "intimate partner"
- 6) Offenses where the property damage or loss exceeds \$100
- 7) Any DUI Offense

### **CASE MANAGEMENT & ACCOUNTABILITY**

It is the referring law enforcement agency's responsibility to complete referral paperwork and to submit case materials to the appropriate CJC. Likewise, it is the referring agency's duty to react and take appropriate action if an individual fails to engage or fails to complete the CJC contract (as long as they are provided notice of failure), electing to (1) continue to pursue or decline further action, (2) cite the individual and refer the matter for prosecution, or (3) attempt to re-refer the action to the CJC, if supported by the CJC.

CJCs and law enforcement agencies are also requested to submit direct referral data to the SAO (by December 31 of each year). Data should reflect the total number of referred cases, regardless of the source, and the number of cases that did or did not successfully complete, or those that remain in progress. Information concerning success and failure is crucial in predicated future success as well as the health and success of the referral program in general and will be utilized in modifying and adapting this policy in the future.