



## **Office of the Lamoille County State's Attorney (LCSA)**

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### **Diversion Program Eligibility Guidelines (November 2024)**

#### ***CRIMINAL CHARGES***

**Post Charge:** Lamoille County State's Attorney (LCSA) may refer cases involving an alleged criminal act to the Lamoille Restorative Center (LRC), including Court Diversion and Tamarack programming, in lieu of prosecution in court. Referred cases may include those in which the defendant has a prior record of a criminal conviction, as well as cases involving a defendant who has been referred to these programs in the past.

**Purpose:** The purpose of this policy statement is to outline the programming that the LCSA may refer individuals to in lieu of prosecution, as well as programming that the LCSA may refer individuals to, post-conviction, during the sentencing process.

**Pre-Charge:** While LCSA intends to eventually consider pre-charge referrals, LCSA does not currently utilize pre-charge programming as there is no funding to support this service at LRC.<sup>1</sup>

**Discretion:** LCSA retains final discretion over the referral of each case to LRC. LRC reserves the right to accept or reject any case referred by LCSA.

#### ***POST-CHARGE ADULT COURT DIVERSION PROGRAM***

**Purpose stated in statute:** To assist adults and youth (10 – 18 yrs) who have been charged with a first or second misdemeanor or a first nonviolent felony (3 V.S.A. § 164(b)(1)) repair any harm they have caused, deepen their connection with their community, and avoid becoming more deeply involved in the criminal justice system.

#### **Eligibility criteria:**

- The individual is charged with a first or second offense of a non-listed felony or a listed misdemeanor, or a DLS regardless of criminal history.
- The individual may or may not have substance use or mental health needs.
- The individual may have previous convictions for crimes that are not eligible for expungement (i.e.,

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<sup>1</sup> Once the LRC informs the LCSA that there is funding to support pre-charge programming at LRC, the LCSA will engage with the LRC to amend this document to draft and produce a pre-charge policy. If pre-charge does become available at LRC, referrals from LCSA will occur as to the merits and circumstances of each matter on an individual basis. It should be noted that the analysis for a pre-charge referral may not be far adrift from the analysis that the LCSA currently undertakes (*as noted in this document*) when recommending a referral to post-charge (*other than the referral is to take place at a different point in the intercept model*). Important to note that law enforcement, is not forbidden, and may choose to refer matters to programming in the pre-charge context.

DUI).

- The charge meets the screening criteria of the VACDP IPV (Intimate Partner Violence) policy.
- The following offenses are excluded from eligibility for referral to Court Diversion:
  - Felony listed crimes as defined by 13 V.S.A. § 5301.
  - Offenses involving intimate partner violence, sexual violence or intimate partner stalking, as outlined in the VT Association of Court Diversion Programs Intimate Partner Violence policy.
  - Offenses involving deadly force; or physical, emotional, or sexual maltreatment of a minor child; or sexual assault, rape, kidnapping or homicide.
  - An offense is a predicate offense carrying a greater penalty for a second conviction and the defendant already has a conviction, excluding DUI and related charges.
  - DUI related offenses that involve injury or death, or where there has been a previous DUI or related charge conviction in Criminal Court.
  - Any other matter where the State's Attorney does not believe that the referral will serve the interests of justice based on the facts and circumstances.<sup>2</sup>

LRC may at their discretion accept or reject any case referred by the LCSA. To be accepted for participation in the program, the defendant must be able to engage in a process to take accountability for their actions, agree not to contest the charge(s) and demonstrate a willingness to repair any harm or loss they may have caused another.

**Completion:** Upon successful completion of the court diversion program, the LCSA will dismiss the charge(s) associated with the case. In the event a defendant fails to complete their program, the case will be returned to the jurisdiction of the LCSA for further action. If dismissal of the charges does not serve the interests of justice, at their discretion, the LCSA may choose not to dismiss the charges, and may object to any future expungement of the conviction. The LCSA may, at their discretion, choose to dismiss the charges with or without prejudice.

### ***POST-CHARGE DUI PROGRAM***

**Purpose:** First time offenders may access appropriate treatment or other resources to improve the person's health and reduce the likelihood of future adverse involvement in the justice system.

#### **Eligibility Criteria:**

- The individual tested low/moderate on a Preliminary Breath Test (PBT) or Data Master Test (DMT).
- The individual does not have a prior DUI conviction.
- The individual does not have a previous DUI dismissed through Diversion.
- The individual was not involved in a Motor Vehicle Accident (MVA) unless it involved only their vehicle.

**Completion:** Upon successful completion of the DUI Program, the LCSA will dismiss the charge(s) associated with the case. In the event a defendant fails to complete their program, the case will be returned to the jurisdiction of the LCSA for further action. If dismissal of the charges does not serve the interests of justice, at their discretion, the LCSA may choose not to dismiss the charges, and may object to any future expungement of the conviction. The LCSA may at their discretion choose to dismiss the charges with or without prejudice.

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<sup>2</sup> 3 V.S.A. § 164(e)(1).

### ***POST-CHARGE TAMARACK PROGRAM***

**Purpose stated in statute:** To assist charged adults with substance abuse or mental health treatment needs regardless of the person's prior criminal history record. Tamarack programming 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.

#### **Eligibility criteria:**

- A person charged with a felony offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible under this section. 3 V.S.A. § 164(b)(2)
- The prosecutor has determined there is probable cause.
- The individual may or may not have prior criminal convictions.
- The individual is charged with a non-listed crime or a listed misdemeanor.
- Screening indicates a need for substance use or mental health treatment.
- The prosecutor or defense attorney indicates there is a need for substance use or mental health treatment.
- May include violations of conditions of probation and violations of conditions of release.
- The charge is not one prohibited by the VACDP IPV (Intimate Partner Violence) policy.

**Completion:** Upon successful completion of the Tamarack Program, the LCSA will dismiss the charge(s) associated with the case and the record may be expunged. In the event a defendant fails to complete their program, the case will be returned to the jurisdiction of the LCSA for further action. If dismissal of the charges does not serve the interests of justice, at their discretion, the LCSA may choose not to dismiss the charges, and may object to any future expungement of the conviction. The LCSA may, at their discretion, choose to dismiss the charges with or without prejudice.

### ***POST-COVICTION REPARATIVE PROGRAM***

**Purpose stated in statute:** Referral to a community reparative program pursuant to 28 V.S.A. chapter 12 is appropriate when an offender has pled guilty to a felony, a misdemeanor, or a conviction that does not involve the subject areas prohibited for referral to a community justice center under 24 V.S.A. § 1967. Referral to a community reparative program pursuant to this subdivision does not require the court to place the offender on probation.

#### **Eligibility criteria:**

- An individual has pled guilty to a felony or a misdemeanor, that does not involve the subject areas prohibited for referral to a community justice center under 24 V.S.A. § 1967.
- The individual is able and willing to engage in a process of taking accountability for their actions and repairing any harm or loss they may have caused another.
- The court may order a condition of participation in a reparative panel for an individual sentenced to probation supervision, sentenced to a term of incarceration, or as part of a plea agreement without Vermont Department of Corrections supervision.

**Completion:** When successful completion of the Reparative Program is a condition of a sentence of probation, and the individual is unable to complete successfully, they are in violation of their probation conditions and the Reparative Program coordinator at LRC will inform their probation officer. When an individual was referred directly from court as part of a plea agreement without probation, the LCSA and their defense attorney will be informed of a failure to complete.

### ***POST-FILING YOUTH-RELATED MATTERS AND DELINQUENCY CASES***

The LCSA may refer delinquency cases or other youth-related matters to LRC after a petition or charges have been filed. LCSA retains final discretion over the referral of a delinquency case to court diversion (described above) or Balanced and Restorative Justice (BARJ).

### ***BALANCED AND RESTORATIVE JUSTICE (BARJ)***

**Purpose:** BARJ is DCF funded and prevention oriented. BARJ provides restorative processes and case management for adjudicated youth, truant youth and youth at risk of involvement in the criminal legal system, to prevent further involvement in the juvenile justice system in Vermont.

**Eligibility criteria:**

- Youth must be between 10 and 18 years of age, or up to 21 years of age if a youthful offender.
- Referrals may be made by LCSA, DCF, court order, Court Diversion, or by community partners, schools, or parents.
- Unless court-ordered or referred by DCF as part of a probation case plan, participation is voluntary and requires parents' permission.
- Prior to receiving services all youth referred to BARJ must be provided with the Youth Assessment Screening Instrument (YASI) to determine their risk to re-offend.
- Youth whose score on the YASI indicates a high risk of reoffending will not be eligible for referral to Court Diversion programming but may be referred to BARJ post delinquency adjudication.

**Completion:** When a youth completes BARJ programming the BARJ case manager reports their successful or unsuccessful completion to the referring party (DCF, LCSA, court, community partner etc.). If referred directly by the LCSA or by the court in lieu of adjudication or post adjudication without DCF probation, and a youth is unsuccessful in completing their BARJ requirement, the LCSA and/or the court may adjudicate or re-sentence the youth at their discretion.

***THIS DOCUMENT IS SUBJECT TO CHANGE PURSUANT TO THE DISCRETION OF THE LCSA.***