



Office of the Orange County State’s Attorney (OCSA), Colin Seaman, Esq.
Post-Charge, Pre-Charge and Direct Referral Program

Criminal Charges

The OCSA may refer cases for which charges have been filed in court involving an alleged criminal act, as well as matters prior to a filing involving alleged criminal conduct, to the Orange County Restorative Justice Center (OCRJC) for participation in restorative justice programming, including Diversion or Tamarack programming, as well as any other restorative justice programming that is made available in lieu of prosecution in court. Referred cases may include cases in which the defendant has a prior record of a criminal conviction, as well as cases in which the defendant had been referred to these programs in the past.

Concerning pre-charge/direct referrals, pursuant to Title 3, the State’s Attorney retains final discretion over the cases that are eligible for referral and may deviate from any adopted policy or practice in accordance with such discretion. The OCSA may refer or refuse to refer cases to the OCRJC prior to the filing of criminal charges—pursuant to the discretion, direction, and oversight of the OCSA. After a referral has occurred, pre-charge, the OCSA may also recall the matter from pre-charge programming pursuant to the OCSA’s discretion. **Likewise, concerning post-charge referrals, the State’s Attorney retains final discretion over the referral of each case to diversion.**

Excluded offenses that are considered to be ineligible for referral to diversion include the following:

- 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.
- Offenses (predicate offenses) which carry 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.

The OCRJC exercises the right to accept or reject a case referred by the OCSA. To be accepted for participation in the programs, the defendant must exhibit an admission of wrongdoing, or agree not to contest the charge(s) and demonstrate a willingness to take responsibility for the act which they were charged, including a willingness to repair any harm or loss they may have caused another.

Concerning post-charge referrals, upon successful completion of programming, the OCSA agrees to 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 OCSA for further action. The OCSA may choose not to dismiss a case and object to any future expungement concerning a successful completion if dismissal, and/or, expungement does not serve the interests of justice (*e.g., intervening or new or pending charges, failure to pay restitution etc.*). The OCSA may also choose to dismiss with or without prejudice according to the OCSA's discretion.

Concerning pre-charge referrals, unless otherwise noted by the OCSA, upon successful completion the OCRJC will email/mail, or otherwise notify, a formal completion letter, within 7 days of completion, to the referral source (could be both law enforcement, the OCSA, or both). The referral source may then proceed to any next steps, including, to note that the matter was successfully resolved by the OCRJC and maintain records of the successful completion as the OCSA sees fit. Unless otherwise directed by the OCSA, if a participant is not successful in pre-charge programming, the OCRJC will inform the referral source (could be the OCSA or law enforcement, or both), return all files as needed, so that charges may be filed or the investigation continued.

Concerning post-charge referrals, the OCSA and OCRJC hereby agrees as follows regarding minimum standards for successful completion of Diversion and Tamarack programming:

- Driving with License Suspended (DLS) cases: participants referred for DLS cases shall be required as a condition of successful completion to either (1) obtain a Restricted Driver's License with an ignition interlock device installed on the vehicle they regularly operate; (2) obtain reinstatement of their full driver's license, regardless of licensure or state of residence; or (3) develop a transportation plan that addresses the participant's transportation needs in lieu of driving. Participants who have not regained their license within 6 months and have not made significant progress towards reinstatement shall be returned to court for prosecution. Re-referrals to the diversion program will be considered. Defendants who previously completed the Diversion program and opted for transportation plans will not be accepted to Diversion if referred for new DLS charges.
- DUI Cases: participants referred for DUI and related charges shall be required as a condition of successful completion to (1) admit to the civil violation of DUI (2) complete the state-mandated IDRP program which includes submitting to an assessment by a Licensed Drug and Alcohol counselor, (3) follow the counselor's recommendations, (5) complete a Safe Driver class offered by the Community Justice Centers of Vermont or a comparable program if the participant lives outside of Vermont, and (6) sign a waiver of confidentiality such that OCRJC may verify completion of the foregoing. In addition, participants must either (1) obtain a Restricted Driver's License with an ignition interlock device installed on the vehicle they regularly operate; (2) obtain reinstatement of their full driver's license, regardless of licensure or state of residence; or (3) develop a transportation plan that addresses the participant's transportation needs in lieu of driving. Note, once a person has successfully completed programming, such persons will not be accepted to Diversion for new DUI related charges.

- **Criminal Speeding Cases:** participants referred for Negligent Operation or Excessive Speed based upon a fact pattern involving speeding shall be required, as a condition of successful completion of Diversion, to complete a Safe Driver class offered by the Community Justice Centers of Vermont or a comparable program if the participants live outside of Vermont.
- **Drug Possession Cases:** participants referred for possession of illegal drugs shall be required as a condition of successful completion to (1) submit to an assessment by a Licensed Drug and Alcohol counselor, (2) follow the counselor's recommendations, and (3) sign a waiver of confidentiality such that OCRJC may verify completion of the foregoing. Participants will be required to engage in treatment for a minimum of 90 days.
- **Restitution:** participants whose crimes have caused financial loss to an identifiable victim that has been documented by a third party shall, as a condition of successful completion, pay restitution in full to the victim or to the victim's satisfaction, cause restitution to be paid in full to the victim, or engage in an agreement with the VT Restitution Unit for payment of the full restitution amount. Cases will not be dismissed, or expunged, according to statute, unless and until restitution has been paid.

Youth-Related Matters and Delinquency Cases

The OCSA may refer delinquency cases or other youth-related matters, after a petition or charges have been filed in court, as well as matters prior to a filing, to the OCRJC for participation in restorative justice programming that is made available in lieu of a court-related proceeding.

Concerning pre-filing/direct referrals, pursuant to Title 3, the State's Attorney retains final discretion over the cases that are eligible for referral and may deviate from any adopted policy or practice in accordance with such discretion. The OCSA may refer or refuse to refer cases to the OCRJC prior to a filing in court—pursuant to the discretion, direction, and oversight of the OCSA. After a referral has occurred, pre-charge, the OCSA may also recall the matter from pre-charge programming pursuant to the OCSA's discretion. **Likewise, concerning post-charge referrals, the State's Attorney retains final discretion over the referral of each case to diversion.**

- **Youth Assessment Screening Instrument:** All youth cited to court for delinquencies shall be referred to OCRJC for a YASI prior to their preliminary hearing.
- **Referrals for Services at Risk Youth:** It is understood that the OCSA may elect to refer a youth cited to court for an alleged delinquent act to the Balanced and Restorative Justice (BARJ) program for support services. These services can provide support for the youth while their case is proceeding through family court and where DCF is not yet providing support services.
- **CHINS-D:** Youth cited to court for truancy related charges may be referred to BARJ as a "youth at-risk", while their case proceeds through the family court process. Youth will be encouraged to engage in the program for a minimum of 6 months. If the referral happens within 3 months of the final day of school, the program will continue into the first 6 weeks of the next school year, to ensure successful re-engagement.

- Diversion: It is understood that the OCSA may elect to refer an alleged delinquent act to the pre-charge Balanced and Restorative Justice (BARJ) program or post-charge Diversion program. In addition, the OCSA allows direct referrals to pre-charge Balanced and Restorative Justice program from the Department of Children and Families (DCF), law enforcement agencies and schools. Referred cases may include cases in which the youth has a prior record of a delinquency adjudication; as well as cases in which the youth had been referred to the programs in the past.

The OCSA may refer any non-excluded case, regardless of its classification, if, in the opinion of the OCSA, to do so would best serve the interests of justice, according to the discretion of the OCSA.

Excluded offenses that are considered ineligible for referral to diversion include the following:

- 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.
- Offenses (predicate offense) which carry 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.

The OCRJC exercises the right to accept or reject a case referred by the State's Attorney. In order to be accepted for participation in the programs, the youth must complete a YASI pre-screening with Low or Moderate risk factors, or youth with High risk factors that are engaged in appropriate third-party support services; exhibit an admission of wrongdoing, or agree not to contest the charge(s) and demonstrate a willingness to take responsibility for the act which they were charged, including a willingness to repair any harm or loss they may have caused another.

Direct referrals from DCF, law enforcement and schools cannot be for excluded offenses or delinquencies involving more than \$500 in restitution. Upon request, OCRJC will inform the OCSA of all direct referrals, including identifying information of the responsible youth and the facts of the incident as reported to OCRJC. OCSA exercises the right to review the case and require the OCRJC to reject the case with the request that DCF, Law Enforcement or the school submit the charge to the OCSA.

Upon successful completion of pre-charge BARJ or Post-charge Diversion programs, the OCSA agrees to dismiss the charge(s) associated with the case. In the event a youth fails to complete their program, the case will be returned to the jurisdiction of the OCSA or further action.

The OCSA and OCRJC hereby agree as follows regarding minimum standards for successful completion of Diversion programming:

- Driving with License Suspended (DLS) cases: youth referred for DLS cases shall be required as a condition of successful completion to either (1) obtain a Restricted Driver's License with an ignition

interlock device installed on the vehicle they regularly operate; (2) obtain reinstatement of their full driver's license, regardless of licensure or state of residence; or (3) develop a transportation plan that addresses the participant's transportation needs in lieu of driving. Youth who have not regained their license within 6 months and have not made significant progress towards reinstatement shall be returned to court for prosecution. Re-referrals to the diversion program will be considered. Youth who opted for transportation plans will not be accepted for new DLS Diversion cases.

- DUI Cases: youth referred for DUI and related charges shall be required as a condition of successful completion to (1) admit to the civil violation of DUI (2) complete the state-mandated IDRP program which includes submitting to an assessment by a Licensed Drug and Alcohol counselor, (3) follow the counselor's recommendations, (5) complete a Safe Driver class offered by the Community Justice Centers of Vermont or a comparable program if the participant lives outside of Vermont, and (6) sign a waiver of confidentiality such that OCRJC may verify completion of the foregoing. In addition, youth must either (1) obtain a Restricted Driver's License with an ignition interlock device installed on the vehicle they regularly operate; (2) obtain reinstatement of their full driver's license, regardless of licensure or state of residence; or (3) develop a transportation plan that addresses the participant's transportation needs in lieu of driving. Once a person has successfully completed programming, youth will not be accepted to Diversion for new DUI related charges.
- Delinquency Speeding Cases: youth referred for Negligent Operation or Excessive Speed based upon a fact pattern involving speeding shall be required as a condition of successful completion to complete a Safe Driver class offered by the Community Justice Centers of Vermont or a comparable program if the participant lives outside of Vermont.
- Drug Possession cases: youth referred for possession of illegal drugs shall be required as a condition of successful completion to (1) submit to an assessment by a Licensed Drug and Alcohol counselor, (2) follow the counselor's recommendations, and (3) sign a waiver of confidentiality such that OCRJC may verify completion of the foregoing. Youth will be required to engage in treatment for a minimum of 90 days.
- Restitution: youth whose delinquencies have caused financial loss to an identifiable victim that has been documented by a third party shall, as a condition of successful completion, pay restitution in full to the victim or to the victim's satisfaction, cause restitution to be paid in full to the victim, or engage in an agreement with the VT Restitution Unit for payment of the full restitution amount. Cases will not be dismissed, or expunged, according to statute, unless and until restitution has been paid.