

Summary of Fall 2020 Justice Reinvestment II Working Group Meetings

On September 30, CSG Justice Center staff presented to the Justice Reinvestment II Working Group. The purpose was to refresh members' memories on the policies passed in Act 148, explain Justice Reinvestment Phase II technical assistance provided by CSG Justice Center staff through 2021, and help working group members prioritize the assigned statutory tasks within their meeting timeline. As part of this conversation, working group members decided to focus on several policy areas for their report to the legislature due on January 15, 2021. Those areas were:

- Studying earned credits for people on probation and exploring other related policy options
- Identifying ways to increase Department of Corrections (DOC) and community provider risk and needs assessment information sharing to help inform plea agreement, sentencing, and revocation decisions
- Determining screening, assessment, case planning, and care coordination gaps for people with complex behavioral health issues in the criminal justice system and recommend system improvements
- Identifying new or existing tools to determine risk factors that can be targeted with treatment and services

During the October 27 Justice Reinvestment II Working Group meeting, the group discussed a potential probation earned credit and related policies. CSG Justice Center staff presented an analysis of Vermont's current probation system using data obtained during Phase I of the Justice Reinvestment process.

Highlights of this analysis included the following:

- Misdemeanor probation sentences are often one year in duration and felony probation sentences are generally less than five years. This is likely due in part to a Vermont law which stipulates that misdemeanor sentences are not to exceed two years, and felony probation sentences should not exceed four years unless the court deems a longer period appropriate.
- Underlying suspended incarceration sentences are often significantly shorter than misdemeanor probation terms. Underlying maximum suspended incarceration sentences are generally the same length for felony probation sentences over two years.
- Most revocations for misdemeanor probation occur in the seventh month of supervision. On average, a person on felony probation, across all sentence lengths, is revoked in their 11th month of supervision. Across both misdemeanor and felony probation sentences, people who fail on supervision are, on average, revoked to prison well within the first half of their sentence.

Working group members also learned that Vermont currently has two mechanisms for discharging individuals on probation: midpoint reviews and discharge upon completion of conditions. However, CSG Justice Center staff did not have access to data to determine the current use or effectiveness of these mechanisms.

In addition to analysis on Vermont's probation system, CSG Justice Center staff presented examples of how other states have set up policies to incentivize good behavior on probation and help people on supervision earn shorter probation terms. This included reviewing earned discharge and revocation cap policies from other states along with examples of how states had structured earned credit policies. Members began to discuss options to structure earned credits, create an earned discharge mechanism, or strengthen Vermont's existing midpoint review process, but the bulk of the conversation was postponed until the next working group meeting due to time constraints.

During the October meeting, CSG Justice Center staff also helped members begin to examine current mental health and substance use service gaps for people in the criminal justice system. Members reviewed the results of the CSG Justice Center's behavioral health assessment work conducted during Phase I of the Justice Reinvestment process and the recommendations stemming from that work. CSG Justice Center staff encouraged members to consider a comprehensive, statewide approach to fully address the overabundance of people with behavioral health needs who move through criminal justice systems and implement a comprehensive approach for working with this population. Phase I recommendations included the following:

- Improving identification of people who have behavioral health needs in the criminal justice system
- Ensuring that people have access to a comprehensive array of treatment and support services both while incarcerated and in the community
- Prioritizing effective correctional interventions for people at the highest risk, ensuring that all people with behavioral health needs receive the treatment they need, regardless of criminogenic risk level
- Strengthening collaboration and training between behavioral health and criminal justice agencies at the state and local levels

The purpose of this overview was to lay a foundation for a broader behavioral health conversation during the next working group meeting.

At the November 24 meeting, the working group resumed their examination of Vermont's mental health and substance use gaps for people in the criminal justice system. This conversation converged with the working group's statutory tasks in Section 22 of Act 148, which directs the Agency of Human Services (AHS) to work with CSG Justice Center staff to report on current behavioral health assessment and screening, case planning, and information sharing practices.

CSG Justice Center staff's presentation highlighted that assessment and screening results are not consistently shared between the various agencies involved to better inform case management and care coordination. These challenges are exacerbated by funding limitations and the fact that people are under-connected to the continuum of care offered by designated agencies for mental health in the community. Additionally, there are significant inconsistencies in the type of information that is shared between supervision officers and community providers who are tasked with supporting case planning and care coordination.

This meeting also included a presentation by Alison Harte of AHS, who discussed the agency's current efforts and ongoing commitment to improving information sharing and providing integrated agency support. This led to a discussion about information sharing to ensure that there is a coordinated collaborative response and that all the appropriate departments under AHS are effectively communicating to support the care of shared clients in the criminal justice system.

Working group members also revisited policy options related to probation earned credit and early discharge. On the topic of probation earned credit, some members discussed a preference for policies similar to Montana's earned discharge policy. In 2017, Montana passed a Justice Reinvestment policy package that required the DOC to recommend people for conditional discharge, with a judge determining whether to grant the discharge. Other members suggested that Vermont's midpoint review process is similar to Montana's, and if that process is strengthened it would have a similar potential

impact. Some members expressed interest in continuing the conversation on the best way to structure an earned credit policy.

During this meeting, members were also tasked with considering fiscal investments to support the sustainability of the current Justice Reinvestment efforts if there is an opportunity for further investment given the current Vermont budget situation. The FY2021 budget designates that reinvestment funds will come from out-of-state bed savings and the funding will be directed to community programs, likely domestic violence intervention programming.

For FY2022, the following investments would support Justice Reinvestment policies:

- \$200,000 to maintain investments in domestic violence intervention programming and reduce the reliance on fee-for-service funding
- \$400,000 to target gaps in community mental health and substance use services for individuals on supervision by expanding community-based services
- \$100,000 to help increase data-driven decision-making by improving DOC's data systems
- \$300,000 to strengthen transitional housing options and assessment tools to identify housing need for the corrections population

Additionally, it is important to support the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel's (RDAP) recommendation to create a three-person body charged with defining and analyzing data pertaining to racial disparities across the criminal justice system. This recommendation stems from RDAP's work on Section 19 of Act 148.

Finally, the working group discussed their report, which is due to the legislature on January 15, 2021, and that policy options would be proposed for consideration by the group to be included in the report at the next meeting in January 2021.