

# ADULT CASE DISPOSITION POLICY

**Purposes:** (1) To ensure equal treatment for all offenders, regardless of offense location, financial resources, demographic traits, or representation status; (2) To avoid prosecutions for conduct that ought not to result in a conviction; (3) To facilitate alternative dispositions that are structured and evidence-based; and (4) To eliminate one-off “sweetheart deals” that have been seen in Vermont’s criminal justice system and historically favored specific defense attorneys and/or defendants belonging to certain socio-economic niches.

**Policy:** In order to implement the above purposes, the following dispositions are hereby authorized and prohibited, respectively, as listed below. If a prosecutor wishes to recommend a case disposition that is not referenced herein, the prosecutor shall consult with the State’s Attorney prior to taking action.

## I. Authorized Dispositions for Cases Received By WCSA:

- Decline Prosecution:
  - because there is no probable cause
  - because, taking the evidence in the light most favorable to the State, the prosecutor believes a guilty verdict would not be achieved at trial
  - because the offender engaged in *de minimis* conduct that does not merit further action.
  - *Note: prosecutors are encouraged to decline marginal cases.*
- Referral to an established Pre-Charge Program targeted to the specific behavior at issue:
  - WRAP for substance abuse / mental illness (high need – low risk of violent offense)
- Charge the case (proceed to II below).

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Note: if a case is declined for prosecution, the Victim Advocate may send the case to the Justice Center in the event the fact pattern presents a dispute or dysfunctional dynamic that would benefit from a mediation or restorative process. This referral is made by the VA, and only after a final determination of declination by the assigned attorney.

## II. Once a case is charged, the following dispositions are authorized:

- Outright Dismissal
- Diversion or Tamarack referral (note: Diversion and Tamarack are post-charge programs)

- Diversion is best suited for first-time or second-time offenders who pose a low risk of harm to the public.
- Tamarack is best suited for cases where and individuals criminal conduct seems primarily driven by mental health issues or substance abuse
- Fine
- Suspended Fine
- Deferred Sentence
- Suspended Sentence (Probation)
  - Probation may include justice center programming as a condition of probation
  - May include Treatment Court
- Split Sentence (Part Probation – Part Imposed)
- Imposed Sentence
  - Prison
    - May include work camp recommendation
  - Pre-approved furlough
    - Work crew
    - Risk Reduction Programming
  - Zero minimum sentence furlough

*Note: if a case is resolved with a fine, probation, or prison term, mandatory minimum sentences must be observed where specified by the General Assembly. Additionally, it is the policy of this Office not to circumvent Legislatively imposed mandatory minimum terms.*

### **III. The following dispositions are not permitted:**

- Dismissal/decline in lieu of financial consideration
  - Examples: payment of a donation, payment of a civil violation
- Conditional Dismissal/Decline
  - Explanation: this is a dismissal/decline subject to a promise by the defendant to satisfy certain conditions. The conditions are typically not accountable or enforceable because no individual or agency is charged with supervising the defendant under such an arrangement.
- Improper Referrals to Established Programs
  - Example: sending a case to diversion “pre-charge” (Why is this prohibited? Diversion is a post-charge program by design and includes an entire statutory scheme that exists to make it work as such.)
- Stipulations to Expunge/Seal an Arrest, Arraignment, or Conviction as part of a negotiated resolution. (Why? We have expungement and sealing laws that apply equally to everyone. Do not stipulate around them to favor a specific defendant/attorney.)