

RORY T. THIBAUT
STATE'S ATTORNEY

KRISTIN GOZZI
SR. DEPUTY STATE'S ATTORNEY

BRIDGET GRACE
JENNIFER NEYENHOUSE
ALFONSO VILLEGAS
DEPUTY STATE'S ATTORNEYS



STATE OF VERMONT
OFFICE OF THE
WASHINGTON COUNTY STATE'S ATTORNEY
255 NORTH MAIN STREET, SUITE 9
BARRE, VT 05641-4163
TELEPHONE: (802) 479-4220
FAX: (802) 479-4408

SUSAN SABENS
ELIZABETH HEBERT
ADMINISTRATION & SUPPORT

HOLLY LEACH
MELISSA BICKELMAN
VICTIM ADVOCATES

TODD PROTZMAN
INVESTIGATOR

POLICY MEMORANDUM

Considerations for Dealing with Homeless, Transient, and Vulnerable Populations

Background

This policy is intended to provide guidance for law enforcement and deputy state's attorneys in making charging and case disposition decisions when dealing with the significant homeless, transient, and vulnerable community member population currently housed through various State of Vermont programs in Washington County. Washington County's homeless and transient population has been of growing concern since at least 2018, however, the COVID-19 pandemic has seen expansive growth of the population served by economic services and hotel based vouchers. As of February 2021, more than 200 individuals are receiving such services, with half or more having limited historical ties to Washington County.

Consistent with existing policy, cases should be resolved at the lowest level of disposition possible, recognizing that a wide range of case outcomes will occur based on offender history, victim impact, and circumstances of the offense behavior. This policy emphasizes dispositions centered on a holistic mindset when considering community members who are struggling with homelessness or other vulnerabilities.

Ultimately, reasonable efforts should be made to address offense behavior outside of the traditional criminal justice system to the greatest extent possible – this includes direct referrals to services, direct referrals to a community justice center, and assuming a criminal charge is referred, utilization of court diversion and the "Tamarack" program. The end goal of disposition should be reduced risk, typically from some combination of accountability and rehabilitation centered on meeting basic needs.

References

WCSAO Policy Memorandum: Direct Referrals to Community Justice Centers
WCSAO Policy Memorandum: Guiding Principles for Effective Prosecution

Considerations for Initial Case Processing

Public order offenses, e.g. disorderly conduct, as well as minor property crimes, such as unlawful trespass or retail theft, are particularly prevalent among individuals struggling with poverty and homelessness. When determining whether to refer a

case for prosecution or to seek some other outcome, law enforcement officers should consider whether:

1. The crime was one of necessity, versus one for personal gain. For example, theft of food and hygiene products may be more indicative of profound poverty, not underlying criminogenic risk factors. In contrast, theft of non-necessity items like alcohol, or personal property belonging to others, may require a different response.
2. The level of needs presented by the offender. For example, in a retail theft case where items are recovered and a notice of trespass is served, the need to prosecute may be obviated if the officer believes the underlying issues regarding risk of re-offense may be resolved through a referral to services or to a community justice center.
3. The behavior of an individual is escalating or the individual refuses to engage with services. In such instances, a referral for prosecution may be beneficial in compelling a meeting with pretrial services, or the imposition of conditions of release to mitigate community risk.

Other jurisdictions have adopted rigid or categorical limitations on the types of cases that will be accepted for prosecution. This office declines to do so, and notes the historically sound judgment and discretion exercised in seeking alternatives to the criminal justice system. Consistent with this guidance, the policy of deference to officer discretion will continue – recognizing that the law enforcement officer may know the person best and be able to make the most intelligent decision of how to address the behavior.

Affidavits of Probable Cause

Law enforcement officers are strongly encouraged to document efforts made to address suspected underlying issues or drivers of the criminal activity being referred for prosecution. For example:

“Prior to this incident, I had two prior encounters with Mr. Smith. On both occasions I provided contact information for substance abuse treatment providers, and on this occasion provided him with contact information for Washington County Mental Health Services.”

The goal is not to disclose the fruits of such conversations or referrals, but rather demonstrate that efforts were made to connect an individual with services prior to his or her appearance in court. While the example contemplates referrals or sharing contact information, some circumstances may allow for direct facilitation of a meeting if for example, the law enforcement agency has a social worker or mental health worker immediately available.

Available Resources

The Barre City and Montpelier Police Departments have an embedded Washington County Mental Health Services employee who is available to assist in calls for service, and Barre City has a social worker on staff. Understanding that some resources are not available to all departments, a list of contacts is provided below. The Barre Community Justice Center's "Starting Point" is highly recommended for general referrals to initiate services.

Starting Point	(802) 476-0276 or (802) 476-0262 after working hours
Barre Community Justice Center	(802) 476-0276
Montpelier Community Justice Center	(802) 223-9606
DCF Economic Services Division	(800) 479-6151 McFarland Office Building, Suite 150, 5 Perry Street, Barre, VT 05641-4270
Washington County Mental Health Svcs	(802) 229-0591 for emergencies (802) 229-1399 for other inquiries
Vermont 211	211 (https://www.vermont211.org/)

WCSASO Case Management & Accountability

Prosecutors reviewing cases on intake or considering disposition thereafter should look to the same factors noted above for law enforcement, and other office practice. The use of adult court diversion and the Tamarack program is heavily encouraged for case disposition. Further, every case involving an individual who is experiencing homelessness or demonstrating other collateral issues relating to lack of housing, should be considered for referral to pretrial services.

Violations of conditions of release should be considered for dismissal when individuals constructively engage in services and when by the time of disposition affirmative steps have been taken to address underlying risk (e.g. substance abuse or mental health treatment on their own accord).

When disposition through the regular court system is required, probation conditions or the collateral consequences of a furlough/to serve sentence must be considered in light of whether they will materially enhance and enable the individual to achieve rehabilitation and greater stability in life. Overly onerous or restrictive conditions must be avoided, and the State's recommendations should be limited to the least restrictive necessary to promote rehabilitation, reduce risk, and meet public safety needs.

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