

**STATE OF VERMONT
OFFICES OF THE STATE'S
ATTORNEYS FOR THE
UNDERSIGNED COUNTIES**



Vermont Department of Corrections
Commissioner Nicholas Deml
NOB 2 South
280 State Drive
Waterbury, VT 05671-2000
(By electronic mail)

Re: Request reconsider and reverse the decision to end work crew.

Commissioner Deml:

The undersigned State's Attorneys, representing four counties across the State, write to urge you and the Department of Corrections (DOC) to reconsider and reverse the decision to end the work crew program. Your May 9th letter to John Campbell was the first we heard of DOC's plan to end the work crew sentencing option. Had DOC reached out to us in the spirit of collaboration and partnership to serve Vermont, we would have said what we are saying now: all of us support the continued availability of work crew as a sentencing option.

Work crew is an important sentencing option. Fair, just, and appropriate sentencing requires consideration of many factors. The end of work crew will see an increase in fine-only, probation, or to-serve sentences that **should** have been work crew sentences. Using fine-only responses can be economically insensitive to an individual defendant's circumstances. Additionally, probation sentences add prolonged caseload burdens to already short-staffed P&P offices while imposing supervision of an offender that might only need a brief punitive and deterrent sentence in the community. Work crew does not suffer from either of the disadvantages of probation or fine-only dispositions identified above.

DOC's May 9th letter contained an assertion ending work crew was appropriate because of a causal link between JRII and a 53% reduction in work crew sentences during the last four years. The force of this assertion is undermined by two important factors at play during this period. Neither factor appeared in DOC's May 9th letter. First, the court system restricted its operations starting in March of 2020 to respond to the COVID-19. The last major restrictions to court operation did not end until September 6, 2022.¹ Far fewer cases were resolved in the months and years of restricted COVID operations than during other periods. Second, during a significant portion of the COVID-19 pandemic, DOC suspended the operation of the work crew program. Vermont would not make decisions

¹ [AO 49 – Changes Coming Sept. 6 - Vermont Bar Association \(vtbar.org\)](#) (Last Accessed May 18, 2023)

about the future of a road based on the usage of that road while it was temporarily closed during a 100-year flood. That's the analytical equivalent of what DOC is doing with the work crew. Using this specific period will inherently provide a distorted snapshot of real sentencing practices. With the reopening of the courts to normal operations, cases are resolving at an increased pace. As we work through the COVID-related backlogs, it is essential that we have as many sentencing options as possible, and work crew is an important piece of that puzzle. Eliminating the program will hamper our efforts to stabilize our caseloads.

We all understand and have felt within our offices the challenges of staffing and budget constraints. We are sympathetic to those challenges, but we are unaware of any efforts made by DOC to highlight this potential issue during the legislative session. Timely raising these issues with the legislature would have allowed prosecutors, judges, defense attorneys, DOC, and other stakeholders the opportunity to testify about the future of work crew. DOC's glaring lack of efforts to strengthen the work crew program suggests a disinclination to maintain work crew, irrespective of staffing and funding.

As one final point, work crew, or something like it, appears to be contemplated by at least one statute. The mandatory minimum penalties for some repeat DLS for DUI offenders calls for preapproved furlough with community restitution. See 23 V.S.A. § 674. Eliminating work crew seems to be at odds with the proscribed statutory minimum.

Work crew is a good sentencing option. Eliminating it will make resolution of the backlog harder. Work crew also plays a role in our statutes. Each of those reasons alone is sufficient to continue work crew as a sentencing option. Collectively, those reasons illustrate the vital role work crew plays in our criminal justice system. Please reconsider and reverse your decision to end the work crew sentencing option.

Respectfully submitted,

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