

2017 Criminal Justice Reflections

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Geographic Justice

- * Vermont is 37 miles wide (at Massachusetts line)
- * Vermont is 89 miles wide (Quebec border)
- * Vermont is 159 miles long
- * *We are talking about geographic justice within these confines.*
- * *You can fix the criminal justice system in the Baltimore, VT, but not in Baltimore, MD*

Geographic Justice

What do we mean by “geographic justice”...?

- * Equal access to treatment dockets
- * Consistency in sentencing
- * Uniform availability of alternatives to the criminal justice system (diversion, pre-charge programming, etc.)

Geographic Justice: Equal access to treatment dockets

Present condition: treatment dockets exist in locations where community stakeholders have obtained federal grants to operate them.

This is why there is a Drug Treatment Court in Rutland, a DUI Treatment Court in Windsor, but no DUI Treatment Court in Rutland and no Drug Treatment Court in Windsor.

Geographic Justice:

Equal access to treatment dockets

Compare: New Hampshire Senate Bill 464 (2016), signed by Governor Hassan on 6/15/2016.

Summary: establishes a statewide drug treatment court grant program with a stabilization fund to provide state money to counties where federal grant funds are lacking.

Speak with: James Vara, Governor Hassan's "drug czar."



Geographic Justice: Equal access to treatment dockets

Ok, but do treatment courts actually work?

Answers:

- * <http://www.nadcp.org/learn/facts-and-figures>
- * <https://www.nij.gov/topics/courts/drug-courts/pages/work.aspx>

Consistency in Sentencing

Sources of Vermont Criminal Law:

- * **Vermont Statutes:** Title 13, Title 18 & Title 23
 - * With a smattering of Title 7, Title 9, Title 10, Title 10A.
- * **Common Law** (cases)

This is not a “criminal code,” but rather an amalgamation of criminal statutes and cases that have accumulated piecemeal over centuries.

If you steal \$200...

- * Out of your employer's cash register
 - * *Embezzlement (up to 10 years prison)*
- * Out of someone else's cash register
 - * *Petit Larceny (up to 1 year prison)*
- * By writing a check to yourself out of grandma's checkbook
 - * *Uttering Forgery (up to 10 years prison)*
- * By using grandma's credit card without permission
 - * *Fraudulent use of credit card (up to 1 year prison)*

A ten-fold increase in exposure...

Depending upon which of four nonviolent methods you choose to steal \$200, your maximum prison exposure will vary by a factor of TEN depending upon which statute you violated.

A ten-fold increase in exposure...

... and because some of these statutes overlap, you could be charged with the 10 year crime in County X and the 1 year crime in County Y.

... and not charged at all in County Z.

Broad Sentencing Ranges

Geographic disparities are invited by broad sentencing ranges:

- * Heroin trafficking range is 0 years – 40 years in prison.
 - * *Average sentence: 4-7 years to serve.*
 - * *But a court in “County X” could impose a sentence of 35-40 years in prison.*
- * DUI First offense range is 0 years -- 2 years in prison.
 - * *Average sentence: pay a fine; no prison.*
 - * *But a court in “County Y” could impose a sentence of 18-24 months in prison.*

Geographic Justice: Consistency in Sentencing

Solutions?

- * Ensure that similar offenses carry similar maximum penalties.
- * Set maximum penalties carefully:
 - * High enough to account for egregious but rare behavior
 - * Low enough to inhibit “County X” from adopting an average sentence that is triple the statewide average.
- * Ensure equal access to prison alternatives, such as treatment dockets.

Consistency in Sentencing

Q: But wait, didn't we already do this?

A: Sort of. The General Assembly commissioned a report in Act 61 of the 2013-2014 legislative biennium. You can find it right here:

<https://www.dropbox.com/s/24b4cgjew8k41n9/Act61%20Crimes%20Classification.pdf?dl=0>

Criminal Code Done Right...

If you want Vermont's criminal statutes and the associated sentencing ranges to operate as a cohesive system, you need to:

- * Recognize this is a multi-year project.
- * Assemble a committee of qualified individuals.
- * Be prepared to spend money to sustain the committee's operations.

Uniform Access to Pre-Charge Programming in lieu of prosecution

Act 195 of the 2013-2014 Legislative Session created “Pretrial Monitors” to:

- * Do some stuff other than pre-charge programming (More on this later.)
- * Provide a pre-charge alternative treatment response to individuals with mental health and substance abuse issues who should be diverted from the criminal justice system. **This is working well in the counties where it has been implemented.**

Uniform Access to Pre-Charge Programming in lieu of prosecution

Recommendation:

- * Ensure that the PTMs are offering Pre-Charge programs in every county. Don't rely on county-level stakeholders to set up a program.
- * Fund PTMs at a level that allows them to devote sufficient time to address each Pre-Charge participant's root causes of criminal behavior, and to verify participant's compliance with contract terms.

Pre-Trial Services

Q: You said the PTMs were doing other things?

A: Act 195 originally intended for PTMs to perform assessments/screenings on individuals charged (“post-charge”) with crimes to better inform judges regarding bail and release conditions.

(Translation: this was supposed to reduce the pretrial detention rate.)

Pre-Trial Services

The problems:

- * Attorneys and judges are not trained on what to do with the PTM's assessment/screening report.
- * The law does not require the court to consider the PTM's report when setting bail.
- * The PTM is not empowered to enforce conditions of release.

Pre-Trial Services

Solutions:

- * Direct the PTMs to evaluate only individuals at high risk of being detained pretrial:
 - * Persons who were lodged prior to their initial court appearance
 - * Persons who have been held for lack of bail for more than 24 hours
 - * Persons whose criminal record check reveals:
 - * A failure to appear in court
 - * A conviction for a violation of a court order

Pre-Trial Services

Solutions (cont'd):

- * Direct the court to consider the PTM's report when determining whether bail is appropriate.
- * Train stakeholders on how to use the report.
- * Empower the PTM to actually *monitor* compliance with conditions of release, thus restoring faith in the “non-bail” system of pretrial release.

Results-Based Accountability

Q. How to measure the performance of the criminal justice system?

A. There are plenty of bad ways to do it.

Results-Based Accountability

Bad Ways to Measure CJS performance:

- Conviction/acquittal rate
- Number of persons served
- Average duration of case
- Workload per attorney/judge/clerk
- Satisfaction survey

Results-Based Accountability

Better Way to Measure CJS performance:

- Recognize that “trauma” is the currency of the CJS.
- Many crimes cause trauma to victims.
- Incarceration can cause trauma to offenders
- Effective sentences can prevent future trauma by reducing recidivism or simply incapacitating the offender.

Results-Based Accountability

Better Way to Measure CJS performance:

- **The Endgame:** measure the system based upon its effectiveness in minimizing trauma for all members of society.
- *Hint: trauma can be defined and monetized. You'll need a psychologist and a statistician. Sorry, I don't even play one on TV.*

Questions?

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