



STATE OF VERMONT
GENERAL ASSEMBLY
JOINT LEGISLATIVE JUSTICE
OVERSIGHT COMMITTEE

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December 21, 2016

House and Senate Committees on Judiciary
House and Senate Committees on Transportation
Senate Committee on Health and Welfare
House Committee on Human Services
House Committee on Corrections and Institutions

Dear Sirs and Madams:

The Joint Legislative Justice Oversight Committee met 12 times between the 2016 and 2017 legislative sessions. The Committee devoted its six regular meetings to studying a multitude of issues facing Vermonters, some of which include: 1) the myriad issues involved in incarcerating inmates with mental illness, 2) the rollout of Act 153, the Juvenile Justice bill, 3) pretrial electronic monitoring, 4) drugged driving, and 5) the delivery of pretrial monitoring and services.

Pursuant to 2 V.S.A. § 801, the Committee received approval from the Speaker of the House and the President Pro Tempore of the Senate to hold an additional six meetings for the purpose of examining the legalization and regulation of marijuana. The Committee devoted these six additional meetings to studying how to develop a comprehensive approach to marijuana that addresses prevention and education for youth, possession and cultivation for adults at least 21 years of age, and a regulatory and revenue system for an adult-use marijuana market that, when compared to the current illegal marijuana market, increases public safety and reduces harm to public health.

Much of the work of the Justice Oversight Committee during this interim revealed the need for further study by the standing committees during the legislative session. The Committee offers the following recommendations for the standing committees in their work on these issues:

1. Electronic Monitoring.

The Electronic Monitoring Program is designed to restrict the movements of pretrial individuals within the State of Vermont judicial system through a global positioning system applied to the individual's ankle. Pretrial monitoring allows for an individual who is charged

with an offense and unable to make bail the opportunity to be released from a correctional facility on conditions of release and electronic monitoring program rules until bail is met or the case is adjudicated. Pretrial monitoring provides strict supervision while allowing family contact, employment, education, and the ability to seek treatment for medical, mental health, or addiction issues that may not be available in a correctional facility.

The Committee heard testimony from the Office of the Defender General, the Windham County Sheriff, the Vermont Center for Crime Victim Services, and the Department of Corrections regarding how electronic monitoring should be carried out. Based on this testimony, the Committee recommends that:

- the responsibility for people on bail lies with the individual counties within the State;
- electronic monitoring be imposed in lieu of bail; and
- the standing committees study whether the courts or the Department of Corrections should oversee the implementation of the electronic monitoring program.

2. Youthful Offender Status.

The Committee evaluated the rollout of 2016 Acts and Resolves No. 153, or H.95, the juvenile justice bill and heard testimony regarding other states' efforts to improve outcomes for juveniles in the criminal justice system. The Committee recommends that:

- the standing committees continue to study the impact of expanding youthful offender eligibility to 20 years of age and providing youthful offender status to appropriate offenders; and
- beginning in 2018, Vermont require that juveniles up to 21 years of age be treated as youthful offenders unless the court finds that doing so would be against the interest of justice, and in the event the juvenile violates conditions of probation, custody of the juvenile revert to the Department of Corrections.

3. Pretrial Services and Monitoring.

The Justice Oversight Committee received updates on the implementation of 2014 Acts and Resolves No. 195, an act relating to pretrial services, risk assessments, and criminal justice programs. The Committee recommends that the standing committees:

- evaluate how best to use the pretrial services system more effectively, including determining whether community justice centers could play a role in delivering services consistently across the State;
- work to create a standard for measuring progress for the General Assembly to use in its evaluation of whether the resources invested in delivery of pretrial services are making an impact on the recidivism rate in Vermont.

4. Marijuana.

The Committee committed six meetings to looking at issues related to the regulation of marijuana. The Committee is not taking a position on whether Vermont should legalize marijuana for adult use but recommends that if the General Assembly does advance such a proposal, it should include a well-regulated commercial market that includes small cultivators, an allowance for adults 21 years of age or over to cultivate up to two mature and seven immature marijuana plants and the marijuana that is harvested from those plants, a strong education and prevention program aimed at youth under 25 years of age that is rolled out well in advance of any retail sales of marijuana, and a financing structure that covers all costs to the State related to legalization of marijuana while supporting a regulated market that can undercut the illegal

market in hopes of moving illegal sales into the regulated market. In consideration of these issues, the Committee recommends that the General Assembly pay close attention to any federal guidance coming from the new administration and keep in contact with other states that have legalized marijuana or are considering legalizing marijuana to keep abreast of the latest policy, practices, and challenges.

The Committee sent a letter to Vermont's congressional delegation asking that they work toward amending federal law to allow states to set their own marijuana and hemp policies without federal interference, to restrict funding to the Department of Justice from using funds to prevent states from implementing their own state laws that authorize the use, distribution, possession, or cultivation of marijuana for medical purposes, and to urge the new administration not to undermine state marijuana and hemp policies that are otherwise in compliance with federal priorities.

The Committee is recommending a number of changes to the medical marijuana program and has developed legislation for consideration by the General Assembly. The legislation proposes to:

- Waive the three-month patient-health care professional relationship requirement when then patient is referred to a specialist who completes a full examination and signs the medical verification form
- Expand the list of qualifying medical conditions
- Allow a patient to possess up to three ounces of marijuana
- Allow dispensaries to advertise
- Clarify that a dispensary may cultivate marijuana outdoors provided the marijuana is in an enclosed, locked facility shielded from public view
- Allow a patient or caregiver to cultivate marijuana even if the patient has designated a dispensary
- Allow a dispensary to convert from a non-profit to a for-profit
- Require continuing medical education to include training on the Medical Marijuana Registry
- Require the Agency of Agriculture, Food and Markets to independently test marijuana-infused edible or potable products sold by a dispensary to ensure appropriate labeling of the tetrahydrocannabinol content.

The Committee was in agreement that patient access should be expanded through more broadly distributed dispensary services, but it was not unanimous in the manner in which to expand these services. Some committee members favor allowing existing dispensaries to serve patients and caregivers at more than one location, effectively allowing satellite operations. These members support increasing the number of dispensaries from four to six once the number of registered patients who have designated a dispensary reaches 4,000. Other committee members prefer to restrict current dispensaries to one location and expand the number of dispensaries from four to eight.

5. Drugged Driving.

Pursuant to 2016 Acts and Resolves No. 163, § 83, the Executive Director of the Department of State's Attorneys and Sheriffs, in consultation with the Commissioner of Public Safety, the Impaired Driving Project Manager of the Governor's Highway Safety Program, and

attorneys representing DUI defendants, met to identify challenges and improvements to Vermont's response to drug-impaired driving. The Executive Director submitted this report to the Justice Oversight Committee, the House and Senate Committees on Judiciary, and the House and Senate Committees on Transportation. The Justice Oversight Committee diverged in its recommendations based on this report and the testimony it heard.

Some members of the committee recommend:

- expanding the number of drug recognition experts (DREs) to between 50–60, and ensuring they are located geographically consistently across the State;
- expanding the Advanced Roadside Impaired Driving Enforcement program (A.R.I.D.E); and
- continuing to monitor the efficacy of available technologies for roadside testing of impairment due to substance use.

Other members of the committee recommend that the standing committees study the challenges in the enforcement of DUI drug offenses and identify improvements in the processes used to detect, arrest, and process drug-impaired drivers and in the laws that govern these processes.

The full Committee believes it is important that Vermont have the ability to do its own testing in cases of suspected drugged driving as soon as possible. Regardless of whether Vermont makes changes to the marijuana laws, the reality is that people are driving under the influence of drugs currently and reliable, timely lab testing of samples in cases of suspected drugged driving is essential to our enforcement efforts.

We look forward to working with the full General Assembly on these issues in the upcoming session.

Sincerely,

Richard Sears, Chair

Alice Emmons, Vice Chair