

VERMONT SENTENCING COMMISSION
Minutes of Meeting
July 16, 2019

The eighth meeting of the Vermont Sentencing Commission commenced at approximately 1:40 p.m. at the Supreme Court in Montpelier. Present were Chair of the Commission Judge Thomas Zonay, Chief Judge Brian Grearson, Judge John Treadwell, Karen Gennette, Martin LaLonde (on behalf of the chair of the House Committee on Judiciary), Monica Weeber (designee for the Department of Corrections), Matthew Valerio, Marshall Pahl, Elaine Boyce, Rebecca Turner, Jordana Levine, John Campbell, and David Scherr (designee for the Attorney General). Absent were Thomas Anderson, David Cahill, and Richard Sears.

I. Approval of Minutes

The meeting opened with the Chair Thomas Zonay's welcome and invitation to approve the minutes of the prior meeting on May 20, 2019.

Karen Gennette moved to approve the minutes; Martin LaLonde seconded. During discussion of the motion, Martin LaLonde requested that the \$250,000 be corrected to \$250 in Section II, subsection C to more accurately reflect the record. With this correction, the motion passed unanimously on a voice vote.

II. Committee Reports and Discussion

A. Committee A

Report and Discussion

Karen Gennette delivered the report on behalf of Committee A. This report indicated that Jordana Levine has completed her review of fine-only offenses. Committee A will make specific recommendations for a vote at the next meeting.

B. Committee B

Report and Discussion

Marshall Pahl delivered the report for Committee B which has been tasked with examining how to maximize treatment for offenders as a response to offenses committed as a result of addiction, and specifically, what the criminal justice system could do to expand access to treatment and what is being done in the criminal justice system that inhibits treatment. Marshall indicated that Committee B has completed its work interviewing providers and is formulating recommendations on how to improve access to treatment. Marshall Pahl and Judge Grearson

have circulated a proposal among their respective colleagues regarding offering time-served credit to individuals who engage in outpatient treatment pre-trial.

C. Committee C

Report and Discussion

Judge Treadwell delivered the report for Committee C. As of this meeting, the Committee had largely finished its work of classifying property offenses and sexual offenses. Judge Treadwell reviewed several of the sexual crimes where the classification structure resulted in a different potential penalty than what is currently in statute and asked the Commission for comment.

Marshall Pahl expressed concern that the recommendations might include increases to existing sentences for certain crimes. Judge Treadwell noted that the enabling statute permitted the Commission to make recommendations that increase potential penalties if a compelling rationale to do so exists. He made the point that sexual abuse of a vulnerable adult (13 V.S.A. §1379(b)) carries a maximum 20 year penalty, whereas sexual assault under 13 V.S.A. §3252(a), which has the same elements of 13 V.S.A. §1379(b) other than the victim need not be a vulnerable adult, could potentially carry a life sentence under the indeterminate life sentence statute (13 V.S.A. §3271). He suggested that the Commission could either recommend an increase to the penalty for 13 V.S.A. §1379(b) to harmonize it with 13 V.S.A. §3252(a) under the “compelling rationale” provision, or provide the Legislature with multiple classification recommendations.

Rebecca Turner expressed a concern that recommending increases in penalties might not comply with the statutory charge that all adjustments reflect “the effective uses of criminal punishment.” Judge Zonay suggested that the Commission could merely highlight the sexual crimes where Committee A recommended an increased penalty and note that while consistency may serve as a rationale for the increase, ultimately the Legislature needs to decide whether it is compelling.

Judge Treadwell moved to Committee C’s report on property crimes. He noted at the outset the wide variety of overlapping criminal offenses that could be charged for what amounts to the same behavior. Further, the severity of the penalty for some criminal offenses are at times related to a dollar amount of loss or harm while others are not. Committee C recommended reclassifying all property crimes based on the dollar amount of loss or harm and created five tiers—below \$100 (Class D Misdemeanor); above \$100 (Class C Misdemeanor); above \$1,000 (Class A Misdemeanor); above \$10,000 (Class D Felony); and above \$100,000 (Class C Felony). Judge Treadwell noted that this structure will reduce prosecutorial discretion in charging decisions, lead to charges that are more consistent and reflective of the criminal conduct, will decrease the penalties for the vast majority of property crimes committed in Vermont, but will increase the penalties for certain crimes that have over \$100,000 in damages.

Rebecca Turner noted again that Committee C did not consider whether increasing penalties for certain crimes is consistent with “effective uses of criminal punishment.” Martin Lalonde requested more background information on Committee C’s property crime proposal. For instance, he wondered why the tiered approach was chosen, why were the specific tiers amounts and number of tiers chosen, how does the Model Penal Code and/or other states approach

property crimes, does the offender’s motivation come into play under this structure, etc. Judge Treadwell indicated Committee C would provide answers to some of these questions at the next meeting. He then gave a brief update on the conceptual framework Committee C was considering for reclassifying motor vehicle offenses.

Motion

Karen Gennette moved to approve the classification recommendation for sexual offenses proposed by Committee C (“Criminal Offense Classification Proposal – Sex Offenses, Draft – 2019-07-05”) amended to remove any recommendation that increased penalties, but noting the inconsistency in the current statutory framework for those five crimes. Further, the Commission shall then evaluate whether the maximum penalties should be reduced to better reflect the effective uses of criminal punishment. Judge Treadwell seconded the motion which passed on a unanimous voice vote.

III. New Business

Judge Zonay empaneled a new subcommittee to begin work on Section 14a of Act 40 (2019) which directs the Sentencing Commission to propose options to provide jurisdiction over individuals who commit non-listed offenses prior to turning 18 years old but are not charged until after turning 18 years old. The following members were appointed: Marshall Pahl, John Campbell, and Monica Weeber.

The discussion then turned to Section 11 of Act 32 (2019), which directs the Sentencing Commission to conduct a comprehensive assessment of Vermont’s sealing and expungement laws—particularly with respect to Negligent Operation and civil offenses—and recommend improvements. The following members were appointed to this subcommittee: David Scherr (Chair), John Campbell, Marshall Pahl, Judge Grearson, Elaine Boyce, and Martin LaLonde.

IV. Scheduling next meeting

The Commission set its next meeting date for Monday, September 16th, 2019 at 1:30 p.m at the Supreme Court.

I. Adjourn

The meeting was adjourned at approximately 3:20 p.m.