

**VERMONT SENTENCING COMMISSION**  
**Minutes of Meeting**  
**October 21, 2019**

The tenth meeting of the Vermont Sentencing Commission commenced at approximately 1:35 p.m. at the State House in Montpelier. Present were Chair of the Commission Judge Thomas Zonay, Robin Joy, 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, David Cahill, Michael Schirling, and David Scherr (designee for the Attorney General). Absent were Chief Judge Brian Grearson, Judge John Treadwell, 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 September 16, 2019.

David Cahill moved to approve the minutes; Elaine Boyce seconded. The motion passed unanimously on a voice vote.

**II. Committee Reports and Discussion**

**A. Committee A**

*Report and Discussion*

Committee A did not have a report for this meeting.

**B. Committee B**

*Report and Discussion*

Committee B did not have a report for this meeting.

**C. Committee C**

*Report and Discussion*

David Cahill delivered the report for Committee C. He reviewed Committee C’s proposal regarding motor vehicle offense classification (“2019-09- 19 T 23 draft.pdf”). Committee C built a classification scheme that centered around the most serious misdemeanor offenses, DUI-2 and Negligent Operation with Death Resulting. These two offenses are classified as Class A

Misdemeanors, and the remaining Title 23 offenses are reclassified into a tiered system in relation to these offenses. This system resulted in a reduction to the maximum penalties for all offenses other than Boating Under the Influence, second offense.

### **III. Commission Votes**

#### **A. Classification Recommendations Regarding Motor Vehicle Offenses**

##### **Motion**

John Campbell moved that the Commission adopt as a recommendation to the Legislature Committee C's proposal regarding motor vehicle offense classification ("2019-09-19 T 23 draft.pdf"). David Cahill seconded the motion.

##### **Discussion**

Rebecca Turner questioned why the Commission was once again proposing to raise the penalty for offenses, this time Boating Under the Influence, second offense, absent a compelling rationale. She also indicated a concern that while many potential incarcerative penalties were decreasing, the proposal did not recommend decreases to the corresponding fines. Matt Valerio noted that the proposed increase to the fines for certain offenses, for instance DUI-1, would make those cases eligible for Public Defender services. This change could potentially expand his Department's caseloads significantly. David Cahill noted that the fine structure in the proposal was merely a reflection of the universal fine classification structure that was approved unanimously by the full Commission at a prior meeting. Judge Zonay suggested that the concern about Public Defender caseload pressure could be addressed statutorily, for instance, through a special exemption for DUI-1.

Further discussion ensued regarding the historic use of fines in Vermont; the efficacy of fines in deterring crime; and the extent to which a defendant's ability to pay should be considered prior to imposing a fine. Judge Zonay noted that studies have generally established that the certainty of punishment has more of a deterrent effect than the severity of punishment. He proposed dropping all fines contained in this proposal by one tier.

At this point, John Campbell withdrew the motion in order for Committee C to consider changes to the fine structure.

#### **B. Recommendations Regarding Expungement and Sealing**

David Scherr reviewed an expungement proposal that created expungement and/or sealing eligibility and corresponding waiting periods for all non-listed, non-Big 12 criminal offenses. In general, the proposal contemplates sealing eligibility to initiate on a shorter timeline than expungement eligibility. David Scherr reiterated a concern raised by the Court Administrator's Office during the Expungement Subcommittee meetings that this sort of two-step structure, with the possibility of hearings at each step, creates a substantial new burden on the Judiciary. The benefits of expungement with respect to housing, education, and employment could largely be achieved through the sealing of records.

John Campbell raised an additional concern regarding the “effect of expungement,” specifically that the permanent deletion of records may have many unintended consequences for the petitioner, law enforcement, crime researchers, and victims. Michael Schirling added that police reports that become eligible for expungement might contain information about third parties that could be relevant to future investigations. He agreed that the “effect of expungement” should be changed from the permanent deletion to either the redaction of records or the segregation of records that may only be accessed by narrowly defined individuals or research organizations. Marshall Pahl noted the complexity of the proposal and suggested the Expungement Subcommittee work on something more streamlined with fewer categories of offenses.

### **Motion**

Martin LaLonde moved that the Commission adopt as a recommendation to the Legislature the Expungement Subcommittee’s proposal regarding sealing and expungement. David Scherr seconded the motion.

### **Discussion**

Judge Zonay indicated that the final report should highlight the discussion around the “effect of expungement” including any recommendations regarding how expunged records are indexed or how documents should be retained and accessed to address the concerns raised.

### **Vote on motion**

The motion passed unanimously on a voice vote. No members abstained.

## **C. Recommendations regarding juvenile jurisdiction**

Marshall Pahl reviewed Subcommittee’s proposal regarding establishing jurisdiction over individuals who committed non-listed crimes prior to their eighteenth birthday but are not charged until afterwards. The recommendation proposed to extend the jurisdiction of the family division until the offender’s twentieth birthday so long as the charges were filed no more than six months following the offender’s eighteenth birthday and the crime was committed when the offender was seventeen years of age. Marshall Pahl noted that the proposal would need to be amended once the Raise the Age legislation becomes effective.

Discussion ensued about extending the length of time to file charges and amending the listed crimes.

### **Motion**

John Campbell moved that the Commission adopt as a recommendation to the Legislature the Subcommittee’s proposal regarding juvenile jurisdiction amended to extend the filing deadline from six months to twelve months. David Cahill seconded the motion.

**Discussion**

Discussion focused on whether the legislature should re-examine and update the listed crimes.

**Vote on motion**

The motion passed unanimously on a voice vote. No members abstained.

**D. Decriminalization of Fine-only Offenses**

Judge Zonay tabled this discussion and vote until the next meeting.

**IV. Report to Legislature**

Judge Zonay indicated that the report to the Legislature would largely track the enabling statute requirements and reflect the recommendations voted on by the Commission. Judge Zonay requested the assistance of John Campbell, Matt Valerio, and Judge Treadwell in drafting the report.

**V. New Business**

Judge Zonay asked that the Committee C present an updated proposal on motor vehicle offense classification that addresses concerns raised regarding fines at the next meeting.

**VI. Scheduling next meeting**

The Commission set its next meeting date for Tuesday, November 19<sup>th</sup> at 2pm at the Supreme Court in Montpelier.

**VII. Adjourn**

The meeting was adjourned at approximately 3:30 p.m.