

Joint Legislative Justice Oversight Committee

Legislative mandates for 2021 interim

June 3, 2021

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Justice Oversight Committee Charge

2015 Act No. 60, § 23

- Committee Powers & Duties
 - Oversee the VT Department of Corrections, including:
 - evaluating DOC strategic, operating, and capital plans;
 - overseeing Departmental policy; and
 - encouraging communication between DOC and administrative branch and criminal justice system.
 - Oversee statewide juvenile and criminal justice system, including:
 - evaluating statewide system of pretrial services, court diversion programs, and community justice center services;
 - evaluating consistency and cost efficiency of system;
 - ensuring the statutes reflect principles of restorative justice; and
 - reviewing timeliness of judicial proceedings.

H.439: an act relating to making appropriations for the support of government

Sec. E.207 JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; TRANSPORTS; STUDY; REPORT

(a) The Joint Legislative Justice Oversight Committee shall examine the current system for transporting prisoners and persons with a mental condition or psychiatric disability who are in the custody of the State, including transports provided by deputy sheriffs who are paid by the State pursuant to 24 V.S.A. § 290(b) and transports provided pursuant to contracts that certain State agencies have entered into with county sheriff's departments. The Committee may recommend changes to the existing system and shall identify any benefits and adverse consequences related to those recommended changes. Any recommended changes shall comply with the Agency of Human Services' policies on the use of restraints in accordance with 2017 Acts and Resolves No. 85, Sec. E.314.

(b) On or before November 15, 2021, the Committee shall submit a report to the House and Senate Committees on Appropriations, on Government Operations, and on Judiciary regarding its findings and any recommendations for legislative action.

(c) In conducting its review pursuant to this section, the Committee shall review audits prepared by the Auditor of Accounts regarding the use of deputies who are paid by the State pursuant to 24 V.S.A. § 290(b) during the state of emergency declared pursuant to Executive Order 01-20, as amended, and the Inmate Transportation Study Report prepared pursuant to 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. E.207.

S.7: an act relating to expanding access to expungement & sealing of criminal history records

Sec. 5. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; EXPUNGEMENT AND SEALING STUDY

During the 2021 legislative interim, the Joint Legislative Justice Oversight Committee shall consider how to simplify and automate the process of expungement and sealing of criminal history records and consider a comprehensive policy that provides an avenue for expungement or sealing of records for all or most offenses except those listed in 33 V.S.A. § 5204(a). In its analysis of what offenses should be eligible, the Committee shall consider whether to exclude from eligibility those offenses associated with and resulting from domestic and sexual violence. The Committee shall propose legislation for the 2022 legislative session on its recommendations regarding:

- (1) a policy to make all or most criminal history records eligible for sealing or expungement, except for conviction records of offenses listed in 33 V.S.A. § 5204(a) and any other offenses the Committee deems appropriate for exclusion;
- (2) the individuals or entities that should have access to sealed criminal history records;
- (3) whether Vermont should continue to employ a two-track system that provides for sealing or expungement of criminal history records based on the nature of the offense, or whether Vermont should employ a one-track system that provides for either sealing or expungement for all eligible offenses;
- (4) implementing an automated process, not requiring a petition, to seal and expunge criminal conviction records that provides for notice to the prosecuting office and an opportunity for the prosecutor to oppose the sealing or expungement.

H.439: an act relating to making appropriations for the support of government

Sec. E.335.1 CORRECTIONAL OFFICERS; BODY-WORN CAMERA POLICY AND DEPLOYMENT

(a) Deployment. The Department of Corrections shall not deploy body-worn cameras until it adopts a policy on their use, including the storage and retention of records, and trains its staff in accordance with the policy.

(b) Policy development. In developing the policy as required by this section, the Department shall:

(1) consider the implications of:

(A) the offender programming it provides; and

(B) the collective bargaining agreement it operates under; and

(2) consult with the Vermont Criminal Justice Council, the America Civil Liberties Union, the Prisoner's Rights Office, the Human Rights Commission, the Vermont State Employees' Association, statewide groups representing individuals with lived experience of incarceration, and any other stakeholder group as determined by the Department.

(c) Reports.

(1) The Department shall provide a progress report to the Joint Legislative Justice Oversight Committee on or before September 15, 2021 on the status of the policy development.

(2) On or before January 15, 2022, the Department shall present to the House Committee on Corrections and Institutions, the Senate Committee on Judiciary, and the House and Senate Committees on Government Operations its policy regarding the use of body-worn cameras for correctional officers.

(d) Funding. The Department shall identify the ongoing cost and funding source for the use of body-worn cameras, including training, data storage, and redaction, and report these findings to the Joint Fiscal and the Joint Legislative Justice Oversight Committees on or before September 15, 2021. The Department shall provide a report to the House and Senate Committees on Appropriations on or before February 15, 2022 on the status of its deployment of body-worn cameras for correctional officers.

H.439: an act relating to making appropriations for the support of government

Sec. E.127.2 ISSUE BRIEF – PROGRAMS FUNDED AND TRENDS RELATED TO CRIMINAL JUSTICE FINES, FEES, PENALTIES AND SURCHARGES

(a) The Joint Fiscal Office shall prepare an issue brief to present to the Joint Legislative Justice Oversight Committee on criminal justice fines, fees, penalties and surcharges at their November or December 2021 meeting. Specifically, the issue brief shall provide:

(1) the revenues generated by these items over the past five fiscal years, and the projected revenue from these source for the next five fiscal years;

(2) an inventory of the programs supported by these revenues, and the projected funding needs of these programs over the next five years.

(3) options for alternative funding sources for these programs for consideration in the 2023 legislation session.

(b) The Joint Fiscal Office shall consult with program stakeholders and shall have the assistance of Executive Branch agencies and departments as needed in preparing this issue brief.

H.435: an act relating to miscellaneous Department of Corrections-related amendments

Sec. 7. CRIMINAL JUSTICE COUNCIL; DEPARTMENT OF CORRECTIONS; CERTIFICATION PROCESS

During the 2021 legislative interim, the Criminal Justice Council and the Department of Corrections shall develop a proposal governing minimum training standards, complaint investigations, and a process for certification and decertification of correctional officers as defined in 28 V.S.A. §3. The proposal shall address the relationship between the Council's and the Corrections Investigative Unit's scope of investigative authority. On or before December 1, 2021, the Council and the Department shall report the proposal to the Joint Legislative Justice Oversight Committee, including any fiscal and programmatic impact of the proposal.

Act 24: an act relating to earned discharge from probation

Sec. 6. SENTENCING COMMISSION; PROBATION TERMS FOR MISDEMEANORS

During the 2021 legislative interim, the Vermont Sentencing Commission shall review 28 V.S.A. § 205 and the December 3, 2020 report of the Pew Charitable Trusts, “States Can Shorten Probation and Protect Public Safety,” and consider whether Vermont should limit the duration of probation terms for misdemeanor offenses to two years.

On or before October 1, 2021, the Commission shall issue its recommendation pursuant to this section to the Joint Legislative Justice Oversight Committee.

H.45 (Act 24): an act relating to earned discharge from probation

Sec. 5. DEPARTMENT OF CORRECTIONS; PROBATION MIDPOINT REVIEW; REPORT

(a) Beginning on July 1, 2021, the Department of Corrections shall collect the following data regarding the probation midpoint review process:

(1) the number of probation discharge or probation term reduction motions filed by the Department;

(2) the number of probation terms that were reduced or terminated pursuant to this Act; and

(3) the amount of time reduced from probation terms as a result of probation term reduction motions granted by the court.

(b) On or before August 1, 2022 and August 1, 2023, the Department shall report to the Joint Legislative Justice Oversight Committee with the data collected pursuant to this section and any recommendations for further legislative action to improve the probation midpoint review process.

H.439: an act relating to making appropriations for the support of government

Sec. E.335 CORRECTIONS APPROPRIATIONS; UNEXPENDED FUNDS TRANSFER; JUSTICE REINVESTMENT; REPORT

(a) In fiscal year 2022, the Secretary of Administration may, upon recommendation of the Secretary of Human Services, transfer unexpended funds between the respective appropriations for correctional services; provided, however, that no transfer shall be made from correctional services out-of-state beds. At least three days prior to any such transfer being made, the Secretary of Administration shall report the intended transfer to the Joint Fiscal Office and shall report any completed transfers to the Joint Fiscal Committee at its next scheduled meeting.

(b) In fiscal year 2022, any unexpended funds for correctional services out-of-state beds shall be carried forward to fiscal year 2023, and the amount reported to the Joint Legislative Justice Oversight Committee in September 2022, to support community-based service programs. Funds may only be expended on community-based service programs upon approval of the Joint Legislative Justice Oversight Committee. Prior to approval, the House Committees on Appropriations and on Corrections and Institutions and the Senate Committees on Appropriations and on Judiciary shall be notified of any proposed expenditures on community based service programs.

S.3: An act relating to competency to stand trial and insanity as a defense

Sec. 6. REPORTS; FORENSIC CARE WORKING GROUP; PROSECUTOR NOTIFICATION; COMPETENCY RESTORATION MODELS

(a) On or before July 15, 2021, the Department of Mental Health shall convene working groups of interested stakeholders to provide recommendations necessary to carry out the provisions in subsections (b) and (c) of this section, including as appropriate:

(b)(1) On or before August 1, 2022, the Department of Mental Health shall submit a final report to the Joint Legislative Justice Oversight Committee and the Chairs of the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and of the Senate Committees on Health and Welfare and on Judiciary addressing:

(A) any gaps in the current mental health and criminal justice system structure related to individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity;

(B) opportunities to:

(i) improve public safety and address the treatment needs for individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity; and

(ii) consider the importance of victims' rights in the forensic care process;

(C) competency restoration models used in other states, including both models that do not rely on involuntary medication to restore competency and how cases where competency is not restored are addressed;

(D) models used in other states to determine public safety risks and the means used to address such risks, including guilty but mentally ill verdicts in criminal cases;

(E) due process requirements for defendants held without adjudication of a crime and presumed innocent;

(F) processes regarding other mental conditions affecting competence or sanity, including intellectual disabilities, traumatic brain injury, and dementia;

(G) models for forensic treatment, including the size, scope, and fiscal impact of any forensic treatment facility; and

(H) any additional recommendations.

(2) On or before January 15, 2022, the Department shall submit a preliminary report to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary summarizing the work completed pursuant to subdivision (1) of this subsection to date, except with regard to the work completed pursuant to subdivision (1)(G).

Overview of schedule for 2021 interim

- Develop comprehensive expungement/sealing policy
- Examine system of transports
- September 15: hear progress report from DOC on correctional officer body camera policy and funding
- October 15: hear report from Sentencing Commission on misdemeanor probation terms
- November 15: provide report to standing committees on transports
- November or December: receive issue brief from JFO on criminal justice fines & fees
- December 1: receive proposal from DOC and Criminal Justice Council on correctional officer training and certification
- December: introduce recommendations in the form of legislation