

**Vermont Governor’s Opioid Coordination Council
Meeting Minutes 10/1/2018**

Location and Time: 1:00 – 3:00 p.m. Waterbury State Office Complex

Present: Chairs: A. Gobeille, T. Anderson, J. Leddy. Members: B. Bick, S. Byers, S. DiSanto, T. Donovan, L. Genge, R. Marcoux, C. Nolan, D. Ricker, S. Thompson, J. Tieman. Staff: J. LaClair, R. Gowdey.

Visitors: J. Corbally, J. Sudhoff-Guerin, C. White, K. Vastine, C. Powell, K. Donohue, C. Johnson, C. Bell.

Agenda Item	Discussion	Action/ Next Steps
Introductory comments Chairs Gobeille, Leddy	<ul style="list-style-type: none"> Update from Attorney General Donovan: Purdue lawsuit. Vermont is participating in the multi-state litigation regarding unfair/deceptive practices. Long-term process, civil (not criminal) process. 	Meeting convened at 1:08 p.m.
Director’s report (J. LaClair)	<ul style="list-style-type: none"> Director LaClair: <u>Community:</u> Capitol for a day event with roundtable for employers, September was national Recovery Month with recovery walks at several recovery centers. Two conferences: Aspenti, and Valley Vista. Rutland’s Serenity House groundbreaking is today (Thus Mayor Allaire is not at this OCC meeting). <u>OCC:</u> Working on school and community-based strategies with Marijuana Advisory Commission. 	
Approval of Minutes	<ul style="list-style-type: none"> August 13, 2018 September 10, 2018 	Approved, voice vote, no changes
Program: Criminal Records Expungement: Act 178		
	<p>Presenters:</p> <ul style="list-style-type: none"> John Campbell, Executive Director, Dept. of State’s Attorneys and Sheriffs (Moderator) James Pepper, Deputy State’s Attorney, Dept. of State’s Attorneys and Sheriffs David Scherr, Assistant Attorney General Lisa Menard, Commissioner, Department of Corrections Rory Thibault, State’s Attorney, Washington County Mairead O’Reilly, Vermont Legal Aid Cara Cookson, J.D., Victim Assistance Program, Vermont Center for Crime Victim Services 	
<u>Introduction/Overview: John Campbell</u>		
	Thanks to stakeholders. Seeking comment from OCC on proposals for expanding expungement and potential impact on prevention, treatment, recovery, economic development, law enforcement in VT. State’s Attorneys supportive of expungement, but expanding eligibility to felony drug and property crimes might impact OCC’s outcomes.	
<u>Rory Thibault, Washington County State’s Attorney: Overview on Criminal Conviction and Vermont’s Expungement and Sealing Laws</u>		
	Historically, send 15-20% of cases to diversion. Now over 25%. Question – look at where we were historically vs. where we are now (better)	

Agenda Item	Discussion	Action/ Next Steps
	<ul style="list-style-type: none"> • Most listed offenses involve a victim • “Predicate offense” – e.g. 2nd degree aggravate domestic assault – so domestic assault is predicate – don’t want to expunge because the crimes build on each other. Sentencing enhancers (for one thing) – not that one charge requires having been charged earlier with the lesser crime. • States Attys are cognizant of long-term consequences. • Nature of prior outcomes . . . <ul style="list-style-type: none"> ○ Even on DUI – 1995, and new in 2018 – not likely to seek enhancement/increased penalty ○ Temporal proximity is important – more recent, more important ○ Predictive value diminishes over time • Risk factor with sexual assault/violence – different from addiction 	
<u>Lisa Menard, Commissioner, Dept. of Corrections</u>		
	<p>We believe people can change. We use criminal records for risk assessment. Even so, time period is relevant.</p> <ul style="list-style-type: none"> • Employment/hiring: correctional officers by law need to be screened for history of sexual violence. • Sales of regulated drugs. • Waiver process so someone can be approved for employment. • In case of violation of supervision, past may be relevant. 	
<u>CARA Cookson, Victim Assistance Program: Victim services – Advocacy, etc.</u>		
	<ul style="list-style-type: none"> • System is geared toward constitutional rights of the defendant. Victims have few protected rights. • A lot of property crimes in the name of drugs. • People with addiction as victims: labor trafficking, partner violence, being robbed, impedes ability to engage with law enforcement to get the help they need. Can impede recovery. • An expungement process exists – fundamental right of crime victims to be heard. • Consider role of restitution. • Goal – prevent future/repeat crimes • Center is responsible for collecting restitution. • Want to ensure the solutions are evidence-based – not an experiment. Science shows – aspects of criminal records that are useful – to determine risk of violent crime and repeats/ • Embezzlement crimes – don’t know if there is science to support, but employers would argue important to know. • Want an appropriate balance. Are we pursuing something that we know is actually going to make a difference? 	
<u>Mairead O’Reilly, Vermont Legal Aid:</u>		
	<ul style="list-style-type: none"> • Context – 1/3 of American population have a criminal record . . . 	

Agenda Item	Discussion	Action/ Next Steps
	<ul style="list-style-type: none"> • US is unique in its use of criminal system to address social issues – higher rates than other countries • Era of big data – info accessible to general public • Collateral consequences – “civil disabilities” – impact is punishing – limit employment, suppress earnings • ABA concerned with collateral consequences – an index in 2013 showed 45,000 unique collateral consequences. 62% of those are employment-related. 	
<u>Why expunge?</u>	<ul style="list-style-type: none"> • Consequences are harmful. • Best practice – expunge/erase. Public safety reasons to maintain records for a period of time. <ol style="list-style-type: none"> 1. Predictive value is finite. No evidence to suggest record should be infinite – after 4 years, reduced risk. 2. Continued use – punishing – record means the same regardless of age of the record. Landlords, etc. are concerned, so easier to reject a risky applicant than to get into the weeds of details. 3. When a person can’t obtain job, fewer options for staying “afloat” – may contribute to recidivism. 4. Economic benefits of expungement - \$5800/year/person. 5. People change – grow up, change, recover childhood traumas, etc. 	
Jeff Wallin: Questions that come up:		
	<ul style="list-style-type: none"> • Difference between expunge and sealing (In VT, expunge is as if never happened) • Criminal history records are set up to be the authoritative source for states and the public. In VT, can only run for convictions. Unfortunately, increasingly, 3rd party companies scrape data from newspapers, data repositories. etc. Beyond our realm. <p>How does a criminal record interact with the ability to purchase/transfer a firearm? Several ways to lose: dishonorable discharge, felony conviction, giving up citizenship voluntarily. If felony expunged, can purchase a gun.</p>	
3 Proposals: John Campbell		
	<ol style="list-style-type: none"> 1. David Scherr, Attorney General’s office <ol style="list-style-type: none"> a. Allow all simple possession crimes to be eligible for expungement – no sales, distribution, trafficking level – after normal waiting period b. Amounts are defined by statute – five years with no intervening conviction c. Not automatic – need prosecutor and court to sign off 2. James Pepper, States Attorneys proposal <ol style="list-style-type: none"> a. Sent Attorney General’s proposal around to States Attorneys. They agreed they should be expungement eligible. Additional safeguards: <ul style="list-style-type: none"> • No pending criminal charges at time of petition • Underlying circumstances (e.g. trafficking charge was pled down – want petitioner to show no trafficking at first charge, and no firearms). Shifts burden to petitioner to show (rather than to state’s attorney) 	

Agenda Item	Discussion	Action/ Next Steps
	<p>Comment: 14 counties/14 different interpretations on same charge, correct? If we want to even out the process – eliminate discretion on the back end. Eliminate discretion at the beginning as well.</p> <ul style="list-style-type: none"> • Did person cross threshold from user to dealer? That’s the “big” question. <p>3. Legal Aid Proposal: Mairead O’Reilly</p> <ul style="list-style-type: none"> ○ Based on countless VTrs with lifelong collateral convictions ○ Add several offenses – non-violent property crime – additional 5 years from completing sentence. ○ Presumption of expungement ○ Redefine predicate offenses – narrow it <p>Ability to petition to expunge any crime so long as they can show . . . (no intervening, restitution paid, and additional burden to demonstrate rehabilitation)</p>	
Discussion	A variety of perspectives were discussed – law enforcement, those seeking expungement, crime victims, recovery service providers, corrections	State’s Attys office will draft report
SIFs REPORT Follow-up (Jolinda)		
	<p>Incorporated input from last meeting and since. Executive committee reviewed and made additional changes. Changes in tone on conclusions. Sent to Gov. Scott Sept. 24, expect to hear back this week.</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> • Appreciated the opportunity to provide additional input. Continue to find tone and lack of citation for some comments challenging. Agree to proceed, but reserve right to challenge in front of legislature on particular aspects. • I tried to get clear last time –eye-opening was the lack of literature to support SIFs. Also remember comment that the start of methadone (met this kind of resistance.) <p>People of good faith with common goals have very different opinions about this. The way we disagree is special – not the same as other parts of the country. I appreciate.</p>	
Public Comment	None	No remarks
Announcements	<ul style="list-style-type: none"> • Roger Marcoux: Oct. 27, DEA statewide drug takeback day • Kathryn Van Haste (Sanders): House passed opioid package, senate due to pass this week. Lots to benefit VT. 	
Closing remarks. Adjourn.	<p>Motion to Adjourn: B. Bick</p> <p>Next meeting: February</p>	Adjourned: 2:56