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January 18, 2022

Jay Diaz, Esq.
ACLU of Vermont
PO Box 277
Montpelier, VT 05601

In re: Public Records Request

Dear Mr. Diaz,

This letter serves to outline the responsive documents available, providing reference to relevant statutory law where no formal office policy is maintained, and noting circumstances where my office does not maintain such information. I would be happy to provide further explanation or engage in dialogue, should the responsive materials generate further questions or additional inquiry.

1. Your office's annual budget for each year since July 1, 2016 through the present.

This information is maintained by the Department of State's Attorneys and Sheriffs and will be provided by the that office to satisfy this request. My office does not exercise direct control over its budget or authorized staffing levels.

2. Your office's proposed budget for the next fiscal year.

This information is maintained by the Department of State's Attorneys and Sheriffs and will be provided by the that office to satisfy this request.

3. Your office's contracts, memorandums of understanding (MOUs), and confidentiality agreements with diversion or restorative justice programs.

- 3a - Memorandum of Understanding with CJs, dated March 2015
- 3b - Memorandum of Understanding with Washington County Diversion Program (2013)
- 3c - Updated Diversion MOU (unsigned copy on file, 2016)

Further, concerning confidentiality, see also 24 V.S.A. §§ 1964 & 1966.

4. All written policies, procedures, guidelines, guidance, criteria, directives, instructions, internal training, or similar type of instructional document in any format regarding:¹

a-e. [Concerning charging, bail, pleas, and sentencing]

Promulgated Office Policies:

- 4a – Effective Prosecution Policy, dated February 27, 2018;
- 4b – Vulnerable Population Policy, dated February 1, 2021;
- 4c – Community Justice Center Policy, dated January 15, 2021;
- 4d – Use of Fines in Offers, dated May 31, 2018;
- 4e – Afterhours Procedures, dated August 29, 2018;
- 4f – Afterhours Bail Checklist, dated August 2018;
- 4g – Policy on Fingerprinting, dated December 30, 2019;
- 4h – Policy on DUI Drug Refusals, August 9, 2021;
- 4i – Treatment Court Policy, dated February 27, 2018;
- 4j – Treatment Court Coordination Form, dated February 2018;
- 4k – Policy on Victim Contact, dated February 27, 2018;
- 4l – Policy on Emergency Housing Overstays, dated June 30, 2018;

Relevant Statutory or other Guidance followed by Prosecutors:

The list presented below is non-exhaustive, however, provides insight into the considerations or legal standards applied by prosecutors in the office on these issues (complementing or in lieu of direct internal policy guidance).

Pretrial Services/Diversion: 3 V.S.A. § 164(b)(1)-(2) & (e)(1)

Bail/Conditions of Release: 13 V.S.A. § 7554

Pretrial Discovery: V.R.Cr.P. 15, 16, & 16.2²

Sentencing Alternatives: 13 V.S.A. § 7030

Collateral Consequences: 13 V.S.A. § 8005

¹ The attachment detailing and further defining these categories was also considered when reviewing for responsive materials.

² Practice established during the last judicial rotation, through a pretrial order, has continued. Specifically, the State is required to disclose or produce discovery in misdemeanor cases within 7 days of arraignment. Felony discovery is regulated via a scheduling order agreed upon by the parties and filed with the court. The Office of the Washington County State’s Attorney exercises a liberal discovery policy based on accepted practice in the jurisdiction, court rules, and ethical standards.

f. How or whether to stipulate to expungement or sealing of charges or convictions;

The office does not maintain a formal policy, however, maintains a good working relationship with Vermont Legal Aid, among other organizations and applies a generally permissive policy on stipulations when statutory criteria is satisfied and there is no victim objection. A “whole person” view is utilized when considering requests, and we recognize that stipulation will frequently save a petitioner time and expense.

g. How, when, or whether to take immigration status into consideration when making charging decisions, plea offers, plea bargains, or sentencing recommendations;

The office does not maintain a formal policy, however, collateral consequences to include immigration status are a consideration when known to the State. Consideration has extended to post-conviction relief practice as well.

h. How or whether to reduce racial disparities in charges, plea bargaining, sentencing recommendations, and/or incarceration;

See policies listed above. See also:

4m – Commentary to VT Digger on CSG Report, December 2021

i-j. [Relating to COVID-19 prosecutorial practices, and subsequent actions]

4n – Interim Measures to Reduce Court Appearances, dated March 13, 2020;

4o – Interim COVID Policy, dated March 16, 2020;

4p – Rescheduled Arraignments, dated March 18, 2020;

4q – Addendum to COVID Policy, dated April 3, 2020;³

k-m. [Relating to CHINS(C) & (D) petitions and use of restorative justice or diversion programs]

The office does not maintain a formal policy on CHINS(C) filings, however, they are generally disfavored (e.g. only one case filed on this basis in FY20), versus other system responses or CHINS theories.

4r – Truancy Guidance and Affidavit, dated September 2019;

³ While not formally rescinded, these policies have been contextually superseded by the passage of time and resumption of more “normal” court operations. Quashing or arrest warrants afterhours and increased use of “cite and release” warrants are both practices that has been maintained, notwithstanding a specific written policy requiring consideration of such actions.

4s – Youthful Offender Flow Chart, Protocol, and Forms, dated September 2018;⁴

4t – CHINS Information Paper for Guardian ad Litem, undated

5. All records, including but not limited to lists, letters, or emails, regarding law enforcement officers whose credibility is or has been in question.

5a – WCSAO Brady/Giglio Policy, dated March 15, 2021

5b – Letters predating current administration

5c – Officer Jonathan Fredholm

5d – Officer Monica Cicio

5e – Trooper Darren Kennedy

5f – Trooper John Gildea

5g – Chief John Helfant

6. The user manual(s), guide(s), or similar document(s) for the case management and/or data software used by your office to track cases, maintain files, and/or create data reports.

This information is maintained by the Department of State's Attorneys and Sheriffs and will be provided by the that office to satisfy this request.

7. Any and all policies related to equity, diversity, inclusion, and/or belonging in employment.

7a – State of Vermont Equal Opportunity Employment Policy 3.0, dated September 13, 2015.

8. Any reports or data collections/spreadsheets already in existence or capable of being generated through currently used case management and/or data software, showing monthly and/or annual counts, from July 1, 2016 through the present, of screening and charging information, pretrial information, use of alternatives to incarceration, plea bargaining and sentencing, and other information.

When considering our case dispositions and statistics, the office relies on judiciary data and maintains the annual reports for assessment of trends and performance.⁵ The following are on record in the office, and responsive to this request:

⁴ Some aspects of these materials have been superceded by court practice and statutory changes.

⁵ A disclaimer to the limits and utility of JustWare data is necessary. The case management system is utilized less as a means of data tracking, and more as a means of storing files and generating form documents. Non-uniform use of case codification e.g. "declined-no action" versus "disposed" for review cases and a backlog of case closes outs renders the utility of quantifying cases by raw count or

- 8a – FY 2021 Pretrial Services Report
- 8b – Vermont Judiciary Data – FY 2020 – Washington County
- 8c – Vermont Judiciary Data – FY 2019 – Washington County
- 8d – Vermont Judiciary Data – FY 2018 – Washington County

It is the understanding of the undersigned that the Department of State's Attorneys and Sheriffs may be generating reports relating to this request in a uniform manner for all counties in receipt of this request. As noted above, drawing conclusions from such data may be difficult based on inconsistent practices or methodologies for coding certain case disposition information.

Conclusion

As noted, my office is happy to provide further explanation on any items. Please let us know if there are any additional requests, questions, or concerns relating to this records request and response. Thank you.

Very Respectfully,



Rory T. Thibault
State's Attorney

type difficult. Additionally, it is not uncommon for an on-call prosecutor to verbally decline a case in lieu of considering a written file, when circumstances require such – meaning, there are cases which law enforcement considers a case referral but does not do so (e.g. the issue at stake is a civil, not a criminal matter). Accordingly, there is no extant spreadsheet or report on case reviews for the time period requested.