

STATE OF VERMONT
RUTLAND COUNTY
OFFICE OF THE STATE'S ATTORNEY

Rosemary M. Kennedy
STATE'S ATTORNEY

Ian C. Sullivan
CHIEF DEPUTY ATTORNEY

Kayley N. Olson
Victoria A. Santry
L. Raymond Sun
Travis W. Weaver
DEPUTY ATTORNEYS



Sierra Boutin
Shea McGee
VICTIM ADVOCATES

Anna Ackley
Janice Buxton
Jennifer Griggs
ADMINISTRATIVE STAFF

William D. Stocker
LAW CLERK

January 28, 2022

Jay Diaz, Esq., General Counsel
ACLU of Vermont
P.O. Box 277
Montpelier, VT 05601

RE: Public Records Request Pursuant to 1 V.S.A. 315, et. seq.,

Dear Mr. Diaz:

I am in receipt of your Public Records Request (“PRR”), dated January 10, 2022, requesting “copies of records from [my] office”, related in part to the following:

1. My office’s annual budget for each year since July 1, 2016 through the present;
2. My office’s proposed budget for the next fiscal year;
3. My office’s contracts, memorandums of understanding (MOUs), and confidentiality agreements with diversion or restorative justice programs;
5. All records, including but not limited to lists, letters, or emails, regarding law enforcement officers whose credibility is or has been in question;
6. The user manual(s), guide(s), or similar document(s) for the case management and/or data software used by my office to track cases, maintain files, and/or create data reports;
7. Any and all policies related to equity, diversity, inclusion, and/or belonging in employment; and
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.

It is my understanding that the Vermont Department of State’s Attorneys and Sheriffs responded to these specific requests, save number eight, on January 24, 2022. It is further my understanding that the department will be responding to number eight on January 31, 2022.

The remainder of your PRR specified in 4 is seeking “[a]ll written policies, procedures, guidelines, guidance, criteria, directives, instructions, internal training, or similar type of instructional document in any format regarding:

- a) The charging and prosecution of criminal offenses;
- b) Pretrial bail and conditions of release;
- c) Plea bargaining;
- d) Discovery;
- e) Sentencing;
- f) How or whether to stipulate to expungement or sealing of charges or convictions;
- g) How, when, or whether to take immigration status into consideration when making charging decisions, plea offers, plea bargains, or sentencing recommendations;
- h) How or whether to reduce racial disparities in charges, plea bargaining, sentencing recommendations, and/or incarceration;
- i) How or whether to change prosecutorial practices in response to the COVID-19 pandemic;
- j) How or whether my office should reverse, rollback, or retain any practice changes made in response to the COVID-19 pandemic;
- k) When or whether to file a CHINS(C) beyond control petition;
- l) When or whether to file a CHINS(D) truancy petition; and
- m) When or whether to submit a CHINS or juvenile delinquency case to a restorative justice or diversion program before or after filing a petition with the court.

While I have daily discussions with my Deputy State's Attorneys [DSAs] about the decisions you mention in number 4, we do not, generally speaking, have written policies. However, there may be emails in the discussion of specific cases where we discussed some of the general guidelines of my office's operation. I do not know of a way to search for those emails, as I would not describe them as 'policies' in an email – my DSA and I would simply be discussing the case. To that end, I have attempted to write out the general principles that guide my office's operation and what I and what I ask my DSAs to keep in mind as they do their jobs.

Rutland County State's Attorney's Office general working procedures:

- 1) Be faithful to the oath we took in holding our office. (if you need a copy of that Oath, I am happy to forward it to you).
- 2) Follow the law and the rules of ethics and criminal procedure.
- 3) If you have a conflict when a case is presented to you, let me know and I will re-assign the case – whether that is at the charging stage or post-arraignment. If the conflict is significant enough, we may need to ask another SA's office to handle the case.
- 4) Discovery, follow the rules and when in doubt, turn it over. DSAs need to have ongoing conversations with Victim Advocates about discovery obligations.
- 5) The 4Ds policies regarding felonies: If you plan to divert, give a deferred sentence, dismantle (meaning amend to misdemeanors) or dismiss a felony, please discuss with me ahead of time.
- 6) DSAs should not negotiate felonies that have not been assigned to them.
- 7) DSAs can negotiate most misdemeanor cases, even if not assigned to them, unless the assigned DSA has indicated that they do not want other DSAs to negotiate. Misdemeanor domestic assault cases are excluded from this guideline and should only be negotiated by the assigned Domestic Violence DSA. (This was mostly an issue when we held in- person calendar calls and the assigned DSA might not necessarily be in the courthouse).

- 8) Offers to resolve cases should be discussed with victims prior to conveyance to the defendant's attorney. If a victim disagrees with your proposed offer, DSAs may feel free to loop me into the conversation.
- 9) Our office generally does not amend DUI cases. My county has had many DUI-related deaths and I believe DUI convictions are important to hold dangerous drivers accountable. If there is a proof problem or some other factor we should consider, we will.
- 10) Sentencings: this is very case-specific and we consider the nature and circumstances of the crime, the defendant's criminal history and behaviors, victim input, the effect of the crime on the community and the need for deterrence, rehabilitation, detainment and punishment.
- 11) Regarding defendants who are not US Citizens or subject to possible deportation, we follow the law, consider the criminal behavior, the defendant's history and the victim's input. We consider proposals and information presented by defense counsel.
- 12) Regarding Sealing or expungement of cases, we follow the law, attempt to get input from the victim and consider any information the defendant wishes to supply.
- 13) During COVID, DSAs may have resolved cases for less than what they would normally, just given the backlog and the desire to resolve cases quickly.
- 14) Regarding Diversion and Restorative Justice programs, our office works collaboratively with those agencies. I do not believe there is a recent MOU in place with either agency, but we routinely send cases to Diversion and Tamarack and the Restorative Justice program at BROCC.
- 15) Regarding Domestic Assault cases, we generally charge strangulation as a 1st degree charge, where appropriate.
- 16) We file hold without bail [HWOB] Motions in violent felony cases where we do not believe conditions of release will protect the victim or the community.
- 17) We seek bail when we believe a person is a risk of flight from prosecution.
- 18) We have a Treatment Court and make referrals when appropriate.
- 19) If a DSA wishes to bring a Habitual Offender Enhancement, I ask the DSA to discuss that with me beforehand.
- 20) CHINS petitions are so fact-specific, we are motivated by the best interests of the child and that may mean filing a petition or giving DCF more time to try and engage the parents.
- 21) Truancies are filled in accordance with my local schools – when they have demonstrated that the child has significant unexcused absences and that they have given notice to the parents and attempted to resolve the issue outside of my office, but the absences have continued, we file a petition. (I am submitted an MOU and a Truancy Cover Letter that spells out more details of our Truancy Policy).
- 22) Regarding juvenile delinquencies, generally speaking if the YASI indicates diversion is appropriate, we send the case to diversion. We work closely with BARJ and attempt to send as many cases as we can to them, where diversion is not appropriate.

I have attempted to answer all of your questions. If you need clarification or would like to discuss my responses, I am happy to do so with you.

Thank you,

Rosemary M. Kennedy
State's Attorney