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STATE OF VERMONT  
OFFICE OF THE EXECUTIVE DIRECTOR  
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

March 8, 2016

House Committee on Institutions & Corrections  
Via Email

Re: H.769 (Citing "Nonviolent" Misdemeanants / Administrative Probation)

Dear Committee Members,

I recently became aware of H.769, and I understand the intent behind the bill. I am writing to share some constructive criticism and a few thoughts about how to better achieve your intended goals.

Specific thoughts about H.769:

- *With Respect to Section 1:* As written the bill does not allow an officer to arrest for DUI offenses committed in the officer's presence. The officer needs this authority to obtain an evidentiary breath/blood test and in order to remove the drunk/drugged driver from the roadway. You can fix this by noting that certain offenses committed in the presence of the officer (V.R.Cr.P. 3(b)) can be arrestable offenses if any of the exceptions listed in V.R.Cr.P. 3(c) apply.
- *With Respect to Section 1:* I would suggest that you focus not on whether an offense is "arrestable" but instead focus on whether custody may be continued after arrest – usually for lack of bail. It is the custody post-arrest (in prison) that is expensive for the system, not the arrest itself. Oftentimes it is necessary for an officer to make an arrest to defuse a volatile situation (think: Simple Assault, Disorderly Conduct) or to obtain evidence (think: DUI breath test). But, after the person has been arrested, photographed, and fingerprinted, it may be safe to release that person on a citation instead of calling the judge for bail. **For this reason, I suggest that you not alter the rules/statutes governing arrest, and rather focus on the circumstances under which custody may be "continued" following arrest.**

- *With Respect to Section 2:* This proposal would transfer authority from the Court to the Department to place an individual on administrative probation subject only to four standard conditions of administrative probation. The problem here is that for many offenses, we impose special probation conditions by agreement such as:
  - Complete Justice Center Programming
  - Complete “x” hours of community service
  - Alcohol/drug counseling

If the Department has the authority to unilaterally strip out these special conditions by imposing “administrative probation,” we as prosecutors will be less inclined to agree to probationary dispositions. Similarly, if we are trying to convince a crime victim that probation is an acceptable resolution (instead of prison, work crew, etc.), we need to have confidence that the rehabilitative probation conditions will actually be enforced. For this reason, I recommend that you strike Section 2.

Here are some alternative proposals for you to consider that would advance the goals of criminal justice reform and cost savings:

- **REFORM PROPOSAL #1:** *Offer a new type of probation called “unsupervised probation.” The only condition of unsupervised probation would be that a person not commit a new crime during the period of probation.* Unsupervised probation exists in many states. The advantages of unsupervised probation are:
  - No probation officer need be assigned.
  - No probation file need be created.
  - The probationer need not attend any meetings or phone calls.
  - But, the probationer has an incentive to be on good behavior, knowing that his/her record check will be run at the end of probation, and a violation will be filed if a new crime was committed.

If you offer us as prosecutors the option of “unsupervised probation,” we will make use of it.

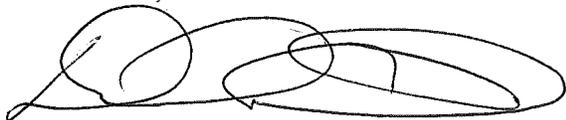
- **REFORM PROPOSAL #2:** *Offer a case disposition option called “unsupervised deferral of sentence.”* This would function the same as unsupervised probation, but would apply to deferred sentences issued under 13 VSA Sec. 7041. In laymen’s terms, this would be the disposition option that tells a defendant: “If you can be good for ‘x’ period of time, your conviction will be expunged and you will have no record.”

- **REFORM PROPOSAL #3:** *Offer a case disposition option called "conviction for the record."* This is a disposition where the scarlet letter of conviction itself is the punishment. There is no fine/probation/jail/work crew/surcharge. It is remarkably simple, and for many people the experience of going to court alone is sufficient to deter future criminal conduct. This is done in other states and is cost-effective.

Conclusion: please consider the above proposals in lieu of the present language of H.769. As currently written, H.769 will cause quite a few headaches without meaningfully advancing the goals of criminal justice reform.

You will find that if you give us better sentencing options, including the above proposals, we will use them effectively to benefit the people of our state.

Best Wishes,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

David J. Cahill  
Acting Executive Director, Department of State's Attorneys & Sheriffs