

Jaye Pershing Johnson

Governor's Counsel

House Judiciary Consideration of S. 58 and S. 195

- In the past year we heard quite a bit from constituents, communities, prosecutors and police regarding their concerns with rising crime. From high profile murders and gun crime related to drugs and gangs ... to persistent ... so called ...low level crimes including *VCRs, Simple Assault, Driving-related conduct, Disorderly Conduct, Violations of Abuse Prevention Orders, Interference w/Access to Emergency Services, Petit Larceny, Retail Theft, Unlawful Mischief, Unlawful Trespass and the like.* These are the crimes that leave community members and local businesses feeling uneasy and unsafe in their downtowns.
- In mid-December we convened a Public Safety Community Engagement Session because we felt like we needed to take a step back and get the right people in a room to discuss what we are hearing from our communities and reflect on direction. Our goal was to let Vermonter's know we hear them.
  - We heard about repeat offenders – I heard some use the terms “revolving door” and “catch and release”
  - We heard the need for collaboration between law enforcement, courts and health care providers
  - And collaboration among the three branches of government – executive, judicial and legislative
  - We heard about some of the drivers of criminal behavior as substance use, mental illness and cooccurring disorders
  - And we need to be able to say certain things out loud like “chaos” and “gangs.”
  - How we have all carrots and no sticks and accountability is non-existent.
  - We need to focus on balancing the needs of individual offenders with what we are seeing in terms of impacts on our communities.
- We cannot ignore the enormity of the issues. There is no single quick fix and we cannot make our communities safer without effective coordination with health care policy makers.
- Data from the Council of State Governments has repeatedly shown Vermont's violent crime has steadily increased since at least 2007. This is a trend we cannot ignore, however many in the Legislature remain skeptical of the data and insist increasing crime in Vermont is just a perception not a reality..
- Our specific, more short term proposals, now found in S. 195 focus on repeat offenses by rolling back bail reforms enacted in 2018 and addressing repeated

violations of conditions of release and other non-compliance with court orders. We need our courts to take swift action when violations of conditions of release such as court ordered curfews, court ordered drug treatment and court prohibitions on further violations of the law are ignored. Sometimes this means individuals should have cash bail or bonds imposed to ensure their appearance in court. Sometimes this means the court immediately issues a warrant so the police ensure an appearance. And sometimes it means the court orders a person to be detained for contempt of court. We also need to be able to detain individuals suffering from addiction for a period sufficient for stabilization and planning before release into the community.

- Our laws and our practices are sending the clear message court appearances aren't important. We had over 5000 arrest warrants for failure to appear issued last year. This doesn't count court extensions granted for failures to appear.
- Over 12,000 of our 21,000 criminal dockets involve repeat offenders.
- These 12,000 likely involve large number of violations of conditions of release – complete disregard for court orders with no consequences other than a misdemeanor citation.
- We also need to address the intersection of drugs and criminal activity.
- S. 58 was our bill from last year and never taken off the wall. This year Senate Judiciary took it up and passed it.
  - The data we are hearing is alarming. In 2022, 100% of the drugs in glassine bags tested in the Vermont State Police Lab tested positive for fentanyl. Fentanyl is replacing heroin as the opioid of choice. Fentanyl is reportedly cheaper, far more potent and far more deadly.
  - 56% of drugs tested in the lab Included xylazine.
  - These drugs are highly addictive and pose significant to harms to families, the children of addicted individuals and our communities and the focus on harm reduction alone fails to balance the harms to our communities.
  - S. 58 would update current law to facilitate prosecution for selling and trafficking drug combinations that include fentanyl. We also need to strengthen our ability to prosecute the crime of drugs death resulting. One problem we have now is the defense of “willful ignorance.” Dealers claim they didn't know the drugs they were selling contained deadly fentanyl. Anyone selling drugs knows or should know the white powder in the glassine bag contains fentanyl and as time goes on will contain other creative mixes of deadly substances.
  - We also need to look at the demand that is driving supply. Our concern is that with an increased emphasis on harm reduction for the individual user

we lose focus on the harms to our communities and the families of addicted individuals.

- I want to quote Stanford addiction expert Keith Humphries speaking in testimony about Oregon's decriminalization program ...which is instructive:
  - If Oregon continues on its current path of not complementing effective harm reduction with strong prevention and treatment initiatives..., and of focusing harm reduction only on people who use drugs..., it should expect rising drug use, ...addiction, ...and harms to communities. If the people of Oregon conclude that those costs are bearable, then of course they have a right to that decision in our democracy. But recent elections in places like San Francisco and Seattle suggest to me at least... that there is a limit to how much community harm from drug use ...voters will tolerate in the long term. That means we need treatment and prevention policies that actually reduce drug use,... as well as harm reduction programs ...that recognize the need to protect communities from the harms of drug use.
- We need to think creatively about how to bring legal pressures to bear to incentivize individuals to stop using drugs and get treatment. For example, our DOC facilities are the one offenders can obtain medically assisted treatment on demand. DOC is working on expanding creative treatment and recovery solutions we need to support.