



The South Carolina Public Defender Association

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To: The Honorable Members of the Equitable
Justice Reform Committee

From: South Carolina Public Defender Association

Date: August 25, 2020

Re: Suggested Reforms

Dear Committee Members,

On behalf of the South Carolina Public Defender Association, it is my privilege to write and thank you for taking up the important issues of sentencing reform, video camera use by police, and civil asset forfeiture laws. As the Committee is well aware, most citizens charged with offenses in General Sessions and Family Courts are represented by public defenders. Thus, we have a vast amount of experience regarding the challenges and consequences wrought by the current state of sentencing laws, police recording policies, and civil asset forfeiture laws. Accordingly, we respectfully ask that you consider the following additional thoughts and suggestions born of that experience as you reform the law on these critical issues.

Sentencing Reform

Sentencing reform is another area we are respectfully asking the committee to address. Sentencing is ostensibly dealt with on a case-by-case basis by the judge who presided over the guilt phases of a criminal case because the judge was in the best position to see, hear, and understand all of the facts and circumstances unique to each case and relevant to sentencing. However, mandatory minimum sentences prohibit proper judicial discretion despite a judge's duty to fulfill this critical role in the criminal justice system. Accordingly, ask the committee to simply remove mandatory minimums altogether, and restore sentencing discretion to the proper authority accountable to the people through the General Assembly: judges. Mandatory minimums were enacted in the 1980s in an effort to create harsher penalties; time and experience have shown these efforts do not work and are extensively incarcerating many of our citizens who could be rehabilitated and become productive again. This is especially apparent in drug sentences.

South Carolina has incredibly low inference levels for drugs; yet, due to mandatory minimums, judges are unable to sentence an addict who had more than the inference level for personal use differently than a person dealing the drugs for profit. It creates a system in which everyone is treated the same, regardless of the facts or circumstances unique to each situation; in the forty years since the implementation of these statutes, we have learned that factors like addiction and mental health issues have more of an impact on drug use and sales than pecuniary interests. Restoring the ability for judges to sentence in accordance with the crime and erasing mandatory minimums restores autonomy to the bench, and allows offenders to be sentenced according to their specific crime.

Police Recording Policies

First and foremost, The Public Defender Association joins the chorus of others in support of mandatory use of body cameras by all police. Simply stated, mandatory use of cameras by all police will bring trust through transparency for the public. Such mandatory use should apply not only to uniformed officers, but plain clothes officers as well—including but not limited to narcotics officers. There is no reason not to do so. Body cameras are simple and unobtrusive for officers to wear, they help officers recollect details of their investigations, and they accurately capture what witnesses say and do. In sum, mandatory use of body cameras will increase the quality of investigations, allow South Carolinians see and know that the vast majority of officers are good and well intentioned in their efforts, and will assist leadership in governments and agencies across the State to ensure proper compliance of their policies by officers whose conduct falls short of those standards. Accordingly, mandatory use of body cameras by all officers is in the best interests of the State of South Carolina.

The Public Defender Association also urges the Committee to draft legislation allowing South Carolina to join the growing number of states requiring police to record custodial interrogations. All interviews between a police officer and a person detained as a suspect in a crime should be recorded in their entirety. Further, this could be accomplished simply, effectively, and inexpensively through the mandatory use of body cameras by all officers.

Recording an interview with a suspect in a crime provides a more objective, thorough, and accurate account than a police report of the interview or a written statement from the suspect. Recordings capture body language and tone, which are not reflected in written accounts. Recordings preserve details that may not have seemed significant enough for inclusion in a police report at the time of the interview but that become critical as the case progresses.

Moreover, recordings of custodial interrogations reduce coerced confessions and protect the accused from police overreaching. They reduce the risk of false confessions, particularly by vulnerable suspects, such young people or people suffering from mental illness.

Many police agencies across the country voluntarily record their interrogations. Like videos from body-worn cameras, recordings of custodial interviews also protect officers in today's climate of mistrust of police and increased scrutiny on officers. Recorded interrogations shield police from litigation due to false allegations of misconduct. They can prove the absence of coercion and can show that police are truthfully recounting interviews.

Recordings also eliminate swearing contests between police and defendants in jury trials. They increase public confidence in the judicial process because they give jurors certainty in what the officer and the defendant said during interrogations. Recordings lead to more guilty pleas because they make it more difficult for defendants to deny their confessions.

Regarding feasibility, recording devices are inexpensive and readily available, as even cellphones have the ability to capture audio and video recordings. The technology is effective, reliable, and easy to use. Moreover, video technology is ubiquitous in our society and already is widely utilized in police investigations through in-car camera videos, body-worn camera videos, surveillance videos on the streets of cities and towns, videos taken to document crime scenes, and videos of interviews with witnesses. It is time to implement video technology in one of the most critical stages of police investigations: the interrogations of detained suspects. Recording these interviews is beneficial to all participants in South Carolina's system of criminal justice.

Civil Asset Forfeiture

Use of civil asset forfeiture by police have taken on increased and unintended dimensions from when they first began. In so doing, public trust in their use has likewise declined, and for good reason: many American citizens—all of whom are presumptively innocent, and yet only some of whom are even charged with a crime—are having their assets seized by police. While there are certainly legitimate reasons for assets of criminals to be seized, there is an inherent unfairness about the government seizing assets of someone who is not convicted of the offense to which the assets were tied. This unfairness is felt by every citizen because it runs counter to fundamental principles of Due Process, and the bedrock principle of innocence until proven guilty. Accordingly, it is our position that assets tied to criminal enterprises can and should be seized only when the defendant is actually convicted for the crime alleged.

Further, the transparency and fairness regarding allocation of the assets seized is as important as the seizure itself. To this end, it is critical to avoid any appearances of impropriety. One of the many criticisms leveled against agencies that frequently invoke civil asset forfeiture is that they are simply taking property of the people for themselves. The simplest and best way to ensure the public knows funding from civil asset forfeiture is properly allocated is by having the assets placed with the General Assembly general fund. In so doing, the people can be confident that police agencies no longer harbor the possible motive to enrich themselves from the taking of property of citizens. Further, it provides the General Assembly a clear picture of exactly how much funding is derived from civil asset forfeiture, and as the voice of the people it can then utilize however much it sees fit on a year to year basis from the general fund.

Conclusion

Thank you again for your time and consideration on these important and timely matters. The South Carolina Public Defender Association remains committed to the advancement of Due Process, justice, and fundamental fairness in our criminal justice system. If there is any way we can be of further assistance, please let me know at your earliest convenience.

Very respectfully yours,

/s/ Breen R. Stevens

Breen R. Stevens
President, SC PDA