



Supreme Court of Appeals State of West Virginia

News

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Justice Benjamin, Judge Aloï talk to legislators about drug courts, expungement

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CHARLESTON, W.Va. – Supreme Court Justice Brent D. Benjamin and Sixteenth Judicial Circuit (Marion County) Judge Michael Aloï spoke to the Joint Standing Committee on the Judiciary on Monday, June 8, about drug courts and limited expungement of certain felonies.

Justice Benjamin reported that more than 1,100 people have graduated from adult and juvenile drug courts in West Virginia and currently there are another 563 enrolled in those programs. There are twenty-four adult drug court programs serving thirty-nine counties and sixteen juvenile drug court programs serving twenty counties.

In 2009 and 2011 respectively, the Legislature enacted legislation which codified adult and juvenile drug courts in West Virginia under the administration, control and responsibility of the Supreme Court. As part of the Justice Reinvestment Act passed in 2014, adult drug courts will be established in all of West Virginia's counties by July 1, 2016.

Justice Benjamin said the Court is on track to make that deadline.

Graduates report that drug court programs are tougher than going to prison, Justice Benjamin said. Not everyone succeeds; about 52 percent of those who enroll in adult drug courts and 60 percent of those who enroll in juvenile drug courts graduate.

Of those who graduate, the recidivism rate is low: 9.4 percent for adult drug court graduates and 14.6 percent for juvenile drug court graduates. That compares to a 55 percent recidivism rate for juveniles in traditional, non-drug court juvenile justice programs.

"There is no magic bullet," Justice Benjamin said.

Successful programs have three things in common: Education, treatment, and punishment. Education involves telling people who have a problem about treatment and opportunities to turn their lives around. Treatment should require sobriety, mental health counseling, and learning to take responsibility. Punishment, including incarceration, must be an alternative for those who do not follow the program.

Circuit judges report that drug addiction is becoming a bigger problem in their counties, Justice Benjamin said. "These are people, these are your constituents," he told the legislators.

He thanked the Legislature for supporting drug courts and for participating with the Judicial Branch in the Justice Reinvestment Act. “It’s glory days are ahead of it,” he said of the act.

All branches of government need to work together to combat drug abuse, he said. While the Legislature focuses on policy, “judges focus on individuals who are at the tail end of the process, that’s who we see before us,” Justice Benjamin said. “The things we see as judges aren’t pretty.”

Judge Aloï addressed the “Second Chance for Employment Act” (HB2604 RS), which was introduced in the 2015 session but died in the House Judiciary Committee. The bill calls for the limited expungement of certain non-violent, non-trafficking drug felonies.

Judge Aloï, who has written a *West Virginia Law Review* article on the topic, said many people who plead guilty or no contest to misdemeanors and felonies often do not realize the lifelong collateral consequences that he likened to a “civil death sentence.” There are more than two thousand prohibitions listed in state, federal, county, and agency regulations against those who have been convicted of crimes detailing things they can no longer do.

There are so many, “How can anyone be informed what the consequences are? To say they are a deterrent, I don’t believe they are because they don’t know what they are,” Judge Aloï said.

He reminded legislators that 95 percent of people who are incarcerated will be free someday. When they are, the civil prohibitions related to their crimes likely will make it difficult for them to find work, volunteer, or get student loans.

In certain cases, after time has passed (for example one year for misdemeanors or five years for felonies), people should be able to petition to have their crimes expunged from their records, Judge Aloï said.

As it is, when he sentences someone he wonders “If I have made them unemployable or made them unable to get back on their feet when they get out. If I have, I have not made my community safer.”

Statistics prove those who are released from prison or jail and are able to find work are less likely to recidivate. “When you suck hope out, you make them desperate, and desperate people do desperate things,” Judge Aloï said.

For expungement to occur, prosecutors should be notified and appear in court, and judges must approve, he said. Only crimes for which the Legislature allows expungement can be considered.

“If that is your intention, to give someone an economic death sentence, OK – that’s your choice for the seriousness of the crime,” he said.

For others, like someone who is convicted for fraudulent use of a credit or debit card – any amount, no matter how little, is a felony – “These are people who have just made mistakes.”

Judge Aloï said, “We are public servants.”