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H.308

Introduced by Representatives LaLonde of South Burlington, Burditt of West
Rutland, Conquest of Newbury, Emmons of Springfield, Grad
of Moretown, Morris of Bennington, and Willhoit of St.
Johnsbury

Referred to Committee on

Date:

Subject: Crimes; Criminal Code Reclassification Committee

Statement of purpose of bill as introduced: This bill proposes to establish a
committee to implement the Criminal Code Reclassification Study
Committee's recommendations for reorganizing and restructuring Vermont's
criminal statutes.

An act relating to ~~a committee to reorganize and reclassify Vermont's~~
~~criminal statutes~~ *the Racial Disparities in the Criminal and Juvenile Justice*
System Advisory Panel

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. CRIMINAL CODE RECLASSIFICATION IMPLEMENTATION~~

~~COMMITTEE~~

~~(a) Creation. There is created the Criminal Code Reclassification
Committee to implement the Criminal Code Reclassification Study
Committee's recommendations for reorganizing and restructuring Vermont's~~

1 criminal statutes.

2 (b) Membership. The Committee shall be composed of the following six
3 members:

4 (1) three current members of the House of Representatives, not all from
5 the same political party, who shall be appointed by the Speaker of the
6 House; and

7 (2) three current members of the Senate, not all from the same political
8 party, who shall be appointed by the Committee on Committees;

9 (c) Powers and duties. The Committee shall develop a classification
10 system that creates categories of criminal offenses on the basis of the
11 maximum potential period of imprisonment and the maximum potential fine.

12 The Committee shall propose legislation that places each of Vermont's
13 criminal statutes into one of the classification offense categories it identifies.

14 If the Committee is unable to reach consensus regarding which classification is
15 appropriate for a particular offense, the Committee shall indicate multiple
16 classification possibilities for that offense.

17 (d) Assistance. The Committee shall have the administrative, technical,
18 and legal assistance of the Office of Legislative Council and the Joint Fiscal
19 Office.

20 (e) Report. On or before December 15, 2017, the Committee shall submit
21 a report consisting of proposed legislation to the House and Senate

1 Committees on Judiciary

2 (f) Meetings.

3 (1) The Committee shall select a chair and a vice chair from among its
4 members at the first meeting.

5 (2) A majority of the membership shall constitute a quorum.

6 (4) The Committee shall cease to exist on January 15, 2018.

7 (g) Reimbursement. For attendance at meetings during adjournment of the
8 General Assembly, members of the Committee shall be entitled to per diem
9 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect on passage.

Sec. 1. CRIMINAL CODE RECLASSIFICATION IMPLEMENTATION

COMMITTEE

(a) Creation. There is created the Criminal Code Reclassification
Committee to develop and propose a classification system for purposes of
structuring Vermont's criminal offenses.

(b) Membership. The Committee shall be composed of the following six
members:

(1) three current members of the House of Representatives, not all from
the same political party, who shall be appointed by the Speaker of the
House, and

~~(2) three current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees;~~

~~(c) Powers and duties.~~

~~(1) The Committee shall develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine. The Committee shall propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies. If the Committee is unable to determine an appropriate classification for a particular offense, the Committee shall indicate multiple classification possibilities for that offense.~~

~~(2) For purposes of the classification system developed pursuant to this section, the Committee shall consider the recommendations of the Criminal Code Reclassification Study Committee, and may consider whether to propose:~~

~~(A) rules of statutory interpretation specifically for criminal provisions;~~

~~(B) the consistent use of mental element terminology in all criminal provisions;~~

~~(C) a comprehensive section of definitions applicable to all criminal provisions.~~

~~(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal~~

~~Office, and may consult with the Vermont Crime Research Group, the Vermont Law School Center for Justice Reform, and any other person who would be of assistance to the Committee.~~

~~(e) Report. On or before December 31, 2017, the Committee shall submit a report consisting of proposed legislation to the House and Senate Committees on Judiciary.~~

~~(f) Meetings.~~

~~(1) The Committee shall select a chair and a vice chair from among its members at the first meeting.~~

~~(2) A majority of the membership shall constitute a quorum.~~

~~(3) The Committee shall cease to exist on January 15, 2018.~~

~~(g) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~Sec. 1. 3 V.S.A. § 168 is added to read:~~

~~§ 168. RACIAL DISPARITIES IN THE CRIMINAL AND JUVENILE~~

~~JUSTICE SYSTEM ADVISORY PANEL~~

~~(a) The Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel is established. The Panel shall be organized and have the~~

duties and responsibilities as provided in this section. The Panel shall be organized within the Office of the Attorney General and shall consult with the Vermont Human Rights Commission, the Vermont chapter of the ACLU, the Vermont Police Association, the Vermont Sheriffs' Association, the Vermont Association of Chiefs of Police, and others.

(b) The Panel shall comprise the following 13 members:

(1) five members, drawn from diverse backgrounds to represent the interests of communities of color throughout the State, who have had experience working to implement racial justice reform, appointed by the Attorney General;

(2) the Executive Director of the Vermont Criminal Justice Training Council or designee;

(3) the Attorney General or designee;

(4) the Defender General or designee;

(5) the Executive Director of the State's Attorneys and Sheriffs or designee;

(6) the Chief Superior Judge or designee;

(7) the Commissioner of Corrections or designee;

(8) the Commissioner of Public Safety or designee; and

(9) the Commissioner for Children and Families or designee.

(c) The members of the Panel appointed under subdivision (b)(1) of this

section shall serve staggered four-year terms. As terms of currently serving members expire, appointments of successors shall be in accord with the provisions of subsection (b) of this section. Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term. Members of the Panel shall be eligible for reappointment. Members of the Panel shall serve no more than two consecutive terms in any capacity.

(d) Members of the Panel shall elect biennially by majority vote the Chair of the Panel. Members of the Panel who are not State employees or whose participation is not supported through their employment or association shall receive per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010, to be provided by the Office of the Attorney General. The Office of the Attorney General shall provide the Panel with administrative and professional support. The Panel may meet up to ten times per year.

(e) A majority of the members of the Panel shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.

(f) The Panel shall review and provide recommendations to address systemic racial disparities in statewide systems of criminal and juvenile justice, including:

(1) continually reviewing the data collected pursuant to 20 V.S.A.

§ 2366 to measure State progress toward a fair and impartial system of law enforcement;

(2) providing recommendations to the Criminal Justice Training Council and the Vermont Bar Association, based on the latest social science research and best practices in law enforcement and criminal and juvenile justice, on data collection and model trainings and policies for law enforcement, judges, correctional officers, and attorneys, including prosecutors and public defenders, to recognize and address implicit bias;

(3) providing recommendations to the Criminal Justice Training Council, based on the latest social science research and best practices in law enforcement, on data collection and a model training and policy on de-escalation and the use of force in the criminal and juvenile justice system;

(4) educating and engaging with communities, businesses, educational institutions, State and local governments, and the general public about the nature and scope of racial discrimination in the criminal and juvenile justice system;

(5) monitoring progress on the recommendations from the 2016 report of the Attorney General's Working Group on Law Enforcement Community Interactions; and

(6) on or before January 15, 2018, and biennially thereafter, reporting to the General Assembly, and providing as a part of that report

recommendations to address systemic implicit bias in Vermont's criminal and juvenile justice system, including:

(A) how to institute a public complaint process to address perceived implicit bias across all systems of State government;

(B) whether and how to prohibit racial profiling, including implementing any associated penalties; and

(C) whether to expand law enforcement race data collection practices to include data on nontraffic stops by law enforcement.

Sec. 2. 20 V.S.A. § 2358 is amended to read:

§ 2358. *MINIMUM TRAINING STANDARDS; DEFINITIONS*

* * *

(e)(1) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont Criminal Justice Training Council and training on the State, county, or municipal law enforcement agency's fair and impartial policing policy, adopted pursuant to subsection 2366(a) of this title.

* * *

(4) The Criminal Justice Training Council shall, on an annual basis, report to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel regarding:

(A) the adoption and implementation of the Panel's recommended

data collection methods and trainings and policies pursuant to 3 V.S.A. § 168(f)(2) and (3);

(B) the incorporation of implicit bias training into the requirements of basic training pursuant to this subsection; and

(C) the implementation of all trainings as required by this subsection.

~~Sec. 3. SECRETARY OF ADMINISTRATION; PROPOSAL~~

~~The Secretary of Administration shall develop a proposal to identify and address racial disparities within the State systems of education, labor and employment, access to housing and health care, and economic development. The Secretary shall report on the proposal to the House and Senate Committees on Judiciary on or before January 15, 2018.~~

Sec. 3. OFFICE OF THE ATTORNEY GENERAL; HUMAN RIGHTS

COMMISSION; REPORT

The Attorney General, together with the Human Rights Commission and interested stakeholders, shall develop a strategy to address racial disparities within the State systems of education, labor and employment, access to housing and health care, and economic development. The Attorney General and the Human Rights Commission shall jointly report on the strategy to the Justice Oversight Committee on or before November 1, 2017.

Sec. 4. 20 V.S.A. § 2366(f) is added to read:

(f) Nothing in this section is intended to prohibit or impede any public

agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished.

*Sec. 5. CRIMINAL JUSTICE TRAINING COUNCIL; FAIR AND
IMPARTIAL POLICING POLICY*

(a) On or before October 1, 2017, the Criminal Justice Training Council, in consultation with the Attorney General, shall review and modify the model fair and impartial policing policy to the extent necessary to bring the policy into compliance with 8 U.S.C. §§ 1373 and 1644.

(b) On or before January 1, 2018, the Criminal Justice Training Council, in consultation with stakeholders, including the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and Migrant Justice, shall update its model fair and impartial policing policy to provide one cohesive model policy for law enforcement agencies and constables to adopt as a part of the agency's or constable's own fair and impartial policing policy pursuant to 20 V.S.A. § 2366(a)(1).

Sec. 6. 20 V.S.A. § 2366 is amended to read:

*§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
POLICING POLICY; RACE DATA COLLECTION*

~~(a)(1) On or before January 1, 2016, the Criminal Justice Training~~

~~Council, in consultation with stakeholders, including the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and Migrant Justice, shall create a model fair and impartial policing policy. On or before July 1, 2016~~ March 1, 2018, every State, local, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt a fair and impartial policing policy that includes, at a minimum, ~~the elements~~ each component of the Criminal Justice Training Council ~~Council's model fair and impartial policing policy.~~

(2) On or before October 1, 2018, and every even-numbered year thereafter, the Criminal Justice Training Council, in consultation with others, including the Attorney General and the Human Rights Commission, shall review and, if necessary, update the model fair and impartial policing policy.

(b) To encourage consistent fair and impartial policing practices statewide, the Criminal Justice Training Council, in consultation with the Office of the Attorney General, shall review the policies of law enforcement agencies and constables required to adopt a policy pursuant to subsection (a) of this section, to ensure those policies establish each component of the model policy on or before April 15, 2018. If ~~a~~ the Council finds that a policy does not meet each component of the model policy, it shall work with the law enforcement agency or constable that is required to adopt a policy pursuant to subsection (a) of

~~this section to bring the policy into compliance. If, after consultation with its attorney or with the Council, or with both, the law enforcement agency or constable fails to do so on or before July 1, 2016~~ adopt a policy that meets each component of the model policy, that agency or constable shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the Criminal Justice Training Council.

(c) ~~On or before September 15, 2014, and annually thereafter~~ Annually, as part of their annual training report to the Council, every State, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall report to the Council whether the agency or officer has adopted a fair and impartial policing policy in accordance with subsections (a) and (b) of this section. The Criminal Justice Training Council shall determine, as part of the Council's annual certification of training requirements, whether current officers have received training on fair and impartial policing as required by 20 V.S.A. § 2358(e).

(d) ~~On or before October 15, 2014, and annually thereafter~~ Annually on April 1, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary regarding which departments and officers have adopted a fair and impartial policing policy, and whether officers have received training on fair and impartial policing.

* * *

Sec. 6a. REPEAL

3 V.S.A. § 168 (Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel) is repealed on July 1, 2020.

Sec. 7. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 6 (law enforcement agencies; fair and impartial policing policy; race data collection) shall take effect on March 1, 2018.