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H.660

Introduced by Representatives LaLonde of South Burlington, Conquest of
Newbury, Grad of Moretown, Burditt of West Rutland, Colburn
of Burlington, Morris of Bennington, Viens of Newport City,
and Willhoit of St. Johnsbury

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; Geographic Justice Criminal Code
Reclassification Commission

Statement of purpose of bill as introduced: This bill proposes to establish the
Geographic Justice Criminal Code Reclassification Commission to review
Vermont criminal sentencing law and practice to determine whether existing
statutory penalties are appropriate and to improve the consistent and uniform
application of criminal justice throughout Vermont by placing each criminal
offense in a category within a standardized penalty classification system.

An act relating to establishing the ~~Geographic Justice Criminal Code
Reclassification Commission~~ *Commission on Sentencing Disparities and
Criminal Code Reclassification*

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

~~Sec. 1. GEOGRAPHIC JUSTICE CRIMINAL CODE RECLASSIFICATION
COMMISSION~~

1 (a) Findings. The General Assembly finds:

2 (1) Vermont lacks a structured criminal offense system that organizes
3 criminal penalties in a manner that appropriately and effectively reflects levels
4 of culpability and maximizes the uniform application of criminal law
5 throughout the State. Contrary to most states and the Model Penal Code,
6 Vermont does not have a classification system that places every crime into a
7 category that attempts to correlate its severity with the appropriate punishment.
8 Rather, each offense is distinct for purposes of imprisonment and fine amount,
9 and most offenses have a statutory maximum term of imprisonment but no
10 minimum or recommended average. Nor has Vermont ever comprehensively
11 reviewed its criminal statutes in order to ensure that statutory sentences reflect
12 current knowledge and do not perpetuate archaic crimes.

13 (2) This structure has resulted in a lack of uniformity in Vermont
14 sentencing practices. Comparable crimes in different regions of the State
15 result in very different sentences, leading to a perception that geographic
16 justice is a systemic problem. Because of the broad sentencing range, many
17 sentences fall far outside statewide averages without any particular
18 circumstances that would explain the departure. Over-incarceration often
19 results, with too many offenders sentenced for overly lengthy periods for
20 crimes where such punishments have not been shown to produce efficient
21 results.

1 ~~(3) The circumstances are ripe for a thorough review of Vermont's~~
2 ~~criminal sentencing law and practice in order to ensure that the justice system~~
3 ~~efficiently deploys limited resources to protect public safety, reduce~~
4 ~~recidivism, and promote geographic consistency.~~

5 (b) Creation. There is created the Geographic Justice Criminal Code
6 Reclassification Commission to improve the consistent and uniform
7 application of criminal justice throughout Vermont by reviewing Vermont's
8 criminal offenses and placing each one in a standardized penalty classification
9 system.

10 (c) Membership. The Commission shall be composed of the following 11
11 members:

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

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

16 (3) the Attorney General or designee;

17 (4) the Defender General or designee;

18 (5) a retired judge appointed by the Chief Superior Judge;

19 (6) the Executive Director of the Department of State's Attorney, and
20 Sheriffs or designee; and

21 ~~(7) the Executive Director of the Vermont Crime Research Group or~~

1 designee

2 (d) Powers and duties.

3 (1) The Commission shall develop a classification system that creates
4 categories of criminal offenses on the basis of the maximum potential period
5 of imprisonment and the maximum potential fine. The Commission shall
6 propose legislation that places each of Vermont's criminal statutes into one of
7 the classification offense categories it identifies.

8 (2) When determining the appropriate category for each offense, the
9 Commission shall consider whether the existing statutory penalties for the
10 offense are appropriate or in need of adjustment better to reflect prevailing
11 average sentencing practices and the effective uses of criminal punishment.
12 For purposes of this analysis, the Commission shall for each offense consider
13 the average sentence and the average amount of time actually served. If the
14 Commission is unable to determine an appropriate classification for a
15 particular offense, the Commission shall indicate multiple classification
16 possibilities for that offense.

17 (3) For purposes of the classification system developed pursuant to this
18 section, the Commission shall consider the recommendations of the Criminal
19 Code Reclassification Study Committee, and may consider whether to propose:

20 (A) rules of statutory interpretation specifically for criminal
21 provisions,

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

3 (C) a comprehensive section of definitions applicable to all criminal
4 provisions; and

5 (D) the decriminalization of some or all fine-only offenses and the
6 transferal of them to the Judicial Bureau for consideration as civil offenses.

7 (e) Assistance. The Commission shall have the administrative, technical,
8 and legal assistance of the Office of Legislative Council and the Joint Fiscal
9 Office and may consult with the Vermont Crime Research Group, the Vermont
10 Law School Center for Justice Reform, and any other person who would be of
11 assistance to the Commission.

12 (f) Report. On or before December 31, 2019, the Commission shall submit
13 a report consisting of proposed legislation to the House and Senate
14 Committees on Judiciary.

15 (g) Meetings.

16 (1) The Commission shall select a chair and a vice chair from among its
17 members at the first meeting.

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

19 (3) The Commission shall cease to exist on January 15, 2020.

20 (h) Reimbursement. For attendance at meetings during adjournment of the
21 General Assembly, legislative members of the Commission shall be entitled to

1 ~~per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.~~
2 § 406. Other members of the Commission who are not employees of the State
3 of Vermont and who are not otherwise compensated or reimbursed for their
4 attendance shall be entitled to reimbursement of expenses pursuant to
5 32 V.S.A. § 1010.

6 Sec. 2. EFFECTIVE DATE

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

~~Sec. 1. COMMISSION ON SENTENCING DISPARITIES AND CRIMINAL~~
~~CODE RECLASSIFICATION~~

~~(a) Findings. The General Assembly finds:~~

~~(1) Vermont lacks a structured criminal offense system that organizes~~
~~criminal penalties in a manner that appropriately and effectively reflects levels~~
~~of culpability and maximizes the uniform application of criminal law~~
~~throughout the State. Contrary to most states and the Model Penal Code,~~
~~Vermont does not have a classification system that places every crime into a~~
~~category that attempts to correlate its severity with the appropriate~~
~~punishment. Rather, each offense is distinct for purposes of imprisonment and~~
~~fine amount, and most offenses have a statutory maximum term of~~
~~imprisonment but no minimum or recommended average. Nor has Vermont~~
~~ever comprehensively reviewed its criminal statutes in order to ensure that~~
~~statutory sentences reflect current knowledge and do not perpetuate archaic~~

~~crimes.~~

~~(2) This structure has resulted in a lack of uniformity in Vermont's sentencing practices. Comparable crimes in different regions of the State result in very different sentences, leading to a perception that geographic justice is a systemic problem. Because of the broad sentencing range, many sentences fall far outside statewide averages without any particular circumstances that would explain the departure. Overincarceration often results, with too many offenders sentenced for overly lengthy periods for crimes for which such punishments have not been shown to produce efficient results.~~

~~(3) The circumstances are ripe for a thorough review of Vermont's criminal sentencing law and practice in order to ensure that the justice system efficiently deploys limited resources to protect public safety, reduce recidivism, and promote geographic consistency.~~

~~(b) Creation. There is created the Commission on Sentencing Disparities and Criminal Code Reclassification to improve the consistent and uniform application of criminal justice throughout Vermont by reviewing Vermont's criminal offenses and placing each one in a standardized penalty classification system.~~

~~(c) Membership. The Commission shall be composed of the following 12 10 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;~~

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

~~(1) two current members of the House of Representatives, one who is a member of the Committee on Judiciary and one who is a member of the Committee on Corrections and Institutions, who shall be appointed by the Speaker of the House;~~

~~(2) two current members of the Senate, one who is a member of the Committee on Judiciary and one who is a member of the Committee on Institutions, who shall be appointed by the Committee on Committees;~~

~~(3) the Attorney General or designee;~~

~~(4) the Defender General or designee;~~

~~(5) a retired judge appointed by the Chief Superior Judge;~~

~~(6) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;~~

~~(7) the Executive Director of the Vermont Center for Crime Victim Services or designee; and~~

~~(8) the Executive Director of the Vermont Crime Research Group or designee.~~

~~(d) Powers and duties.~~

~~(1) The Commission 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 Commission shall propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies.~~

~~(2) When determining the appropriate category for each offense, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment. For purposes of this analysis, the Commission shall for each offense consider the average sentence and the average amount of time actually served. If the Commission is unable to determine an appropriate classification for a particular offense, the Commission shall indicate multiple classification possibilities for that offense. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences.~~

~~(3) For purposes of the classification system developed pursuant to this section, the Commission 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; and~~

~~(D) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses.~~

~~(e) Assistance. The Commission 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, formerly incarcerated Vermonters, and any other person who would be of assistance to the Commission.~~

~~(f) Report. On or before November 30, 2019, the Commission shall submit a report consisting of proposed legislation to the House and Senate Committees on Judiciary.~~

~~(g) Meetings.~~

~~(1) The Commission 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 Commission shall cease to exist on July 15, 2020.~~

~~(3) The Commission shall cease to exist on July 15, 2020.~~

~~(4) The Commission shall meet no more than 8 times when the General~~

~~Assembly is not in session~~

~~(h) Reimbursement. For attendance at meetings during adjournment of the General Assembly legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406. Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to reimbursement of expenses pursuant to 32 V.S.A. § 1010.~~

~~Sec. 2. EFFECTIVE DATE~~

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

~~Sec. 1. 13 V.S.A. § 5451 is amended to read:~~

~~§ 5451. CREATION OF COMMISSION~~

~~(a) The Vermont ~~sentencing commission~~ Sentencing Commission is established for the purpose of overseeing criminal sentencing practices in the ~~state~~ State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the ~~general assembly~~ General Assembly.~~

~~(b) The ~~committee~~ Commission shall consist of the following members:~~

~~* * *~~

~~(2) the ~~administrative judge~~ Chief Superior Judge or designee, provided that the designee is a sitting or retired Vermont judge;~~

* * *

(16) the ~~executive director~~ Executive Director of the Vermont center for justice research Crime Research Group; and

* * *

Sec. 2. 13 V.S.A. § 5452 is amended to read:

§ 5452. DUTIES

* * *

(c) It shall be a priority for the Sentencing Commission to develop responses to the significant impacts that increased opioid addiction have had on the criminal justice system. The Commission shall consider:

(1) whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses;

(2) whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses;

(3) how to maximize treatment for offenders as a response to offenses committed as a result of opioid addiction.

Sec. 3. VERMONT SENTENCING COMMISSION; REPORT ON

SENTENCING DISPARITIES AND CRIMINAL CODE

RECLASSIFICATION

(a)(1) In order to improve the consistent and uniform application of criminal justice throughout Vermont, the Vermont Sentencing Commission established under 13 V.S.A. § 5451 shall review Vermont's criminal offenses and place each one in a standardized penalty classification system.

(2) The Commission 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 Commission shall propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies.

(3) When determining the appropriate category for each offense, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment. For purposes of this analysis, the Commission shall for each offense consider the average sentence and the average amount of time actually served. If the Commission is unable to determine an appropriate classification for a particular offense, the Commission shall indicate multiple classification possibilities for that offense. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences.

(4) For purposes of the classification system developed pursuant to this

section, the Commission shall consider the recommendations of the Criminal Code Reclassification Study Committee and shall consider whether to propose:

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

(B) the consistent use of mens rea terminology in all criminal provisions;

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

(D) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses; and

(E) a redefinition of what constitutes an attempt in Vermont criminal law, including whether the Model Penal Code's definition of attempt should be adopted in Vermont.

(b)(1) On or before December 15, 2018, the Commission shall report to the Joint Justice Oversight Committee on its progress toward achieving the goals of this section. The report required by this subdivision may be provided by oral testimony.

(2) On or before November 30, 2019, the Commission shall submit a report consisting of proposed legislation to the House and Senate Committees on Judiciary.

Sec. 4. APPROPRIATION

The sum of \$50,000.00 is appropriated from the General Fund to the Judiciary in FY 2018 to carry forward to FY 2019 to carry out the purposes of this act. It is the intent of the General Assembly to fund at least the same amount in FY 2020.

Sec. 5. REPEAL

13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452 (creation of Vermont Sentencing Commission) shall be repealed on July 1, 2021.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.