

H.660

An act relating to establishing the Commission on Sentencing Disparities
and Criminal Code Reclassification

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

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 10 members:

(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.

(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.