

Senate proposal of amendment

H. 660

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

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

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(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.