

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 660
3 entitled “An act relating to establishing the Commission on Sentencing
4 Disparities and Criminal Code Reclassification” respectfully reports that it has
5 considered the same and recommends that the Senate propose to the House that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 Sec. 1. **VERMONT SENTENCING** COMMISSION; **REPORT** ON
9 SENTENCING DISPARITIES AND CRIMINAL CODE
10 RECLASSIFICATION

11 (a) The General Assembly finds:

12 (1) Vermont lacks a structured criminal offense system that organizes
13 criminal penalties in a manner that appropriately and effectively reflects levels
14 of culpability and maximizes the uniform application of criminal law
15 throughout the State. Contrary to most states and the Model Penal Code,
16 Vermont does not have a classification system that places every crime into a
17 category that attempts to correlate its severity with the appropriate punishment.
18 Rather, each offense is distinct for purposes of imprisonment and fine amount,
19 and most offenses have a statutory maximum term of imprisonment but no
20 minimum or recommended average. Nor has Vermont ever comprehensively

1 reviewed its criminal statutes in order to ensure that statutory sentences reflect
2 current knowledge and do not perpetuate archaic crimes.

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

11 (3) The circumstances are ripe for a thorough review of Vermont’s
12 criminal sentencing law and practice in order to ensure that the justice system
13 efficiently deploys limited resources to protect public safety, reduce
14 recidivism, and promote geographic consistency. The most appropriate entity
15 to conduct this review is the Vermont Sentencing Commission, which has been
16 charged by the General Assembly under Chapter 169 of Title 13 with
17 “reducing geographical disparities in sentencing” and directed to “report on
18 geographical sentencing disparities which result in a defendant’s sentence for
19 an offense varying substantially on the basis of the county in which it is
20 committed.”

1 ~~(b)(1) Creation. There is created the Commission on Sentencing~~
2 ~~Disparities and Criminal Code Reclassification~~ In order to improve the
3 consistent and uniform application of criminal justice throughout Vermont, the
4 Vermont Sentencing Commission established under 13 V.S.A. § 5451 shall
5 review by reviewing Vermont's criminal offenses and placing place each one
6 in a standardized penalty classification system.

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

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

13 ~~(2) two current members of the Senate, one who is a member of the~~
14 ~~Committee on Judiciary and one who is a member of the Committee~~
15 ~~Institutions, 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 Attorneys and~~
20 ~~Sheriffs or designee;~~

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

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

5 ~~(d) Powers and duties.~~

6 (2) The Commission shall develop a classification system that creates
7 categories of criminal offenses on the basis of the maximum potential period of
8 imprisonment and the maximum potential fine. The Commission shall propose
9 legislation that places each of Vermont’s criminal statutes into one of the
10 classification offense categories it identifies.

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

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

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

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

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

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

13 (E) a redefinition of what constitutes an attempt in Vermont criminal
14 law.

15 ~~(e) Assistance. The Commission shall have the administrative, technical,~~
16 ~~and legal assistance of the Office of Legislative Council and the Joint Fiscal~~
17 ~~Office and may consult with the Vermont Crime Research Group, the Vermont~~
18 ~~Law School Center for Justice Reform, formerly incarcerated Vermonters, and~~
19 ~~any other person who would be of assistance to the Commission.~~

20 (c) Reports.

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

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

8 ~~(g) Meetings.~~

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

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

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

13 ~~(4) The Commission shall meet no more than 8 times when the General~~
14 ~~Assembly is not in session.~~

15 ~~(h) Reimbursement. For attendance at meetings during adjournment of the~~
16 ~~General Assembly, legislative members of the Commission shall be entitled to~~
17 ~~per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.~~
18 ~~§ 406. Other members of the Commission who are not employees of the State~~
19 ~~of Vermont and who are not otherwise compensated or reimbursed for their~~
20 ~~attendance shall be entitled to reimbursement of expenses pursuant to~~
21 ~~32 V.S.A. § 1010.~~

1 **Sec. 2. APPROPRIATION**

2 \$50,000.00 is appropriated from the General Fund to the Judiciary in FY
3 2019 to carry out the purposes of this act. It is the intent of the General
4 Assembly to fund at least the same amount in FY 2020.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on passage.

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9 (Committee vote: _____)

10

11

Senator _____

12

FOR THE COMMITTEE