

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. 13 V.S.A. § 5451 is amended to read:**

9 **§ 5451. CREATION OF COMMISSION**

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

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

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

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

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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 opiod addiction have had on the criminal justice system. The Commission shall consider:

(1) whether and under what circumstances offenses committed as a result of opiod 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 opiod addiction.

Sec. 3. VERMONT SENTENCING COMMISSION; REPORT ON
SENTENCING DISPARITIES AND CRIMINAL CODE
RECLASSIFICATION

(a) 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

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

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

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

1 to conduct this review is the Vermont Sentencing Commission, which has been
2 charged by the General Assembly under Chapter 169 of Title 13 with
3 “reducing geographical disparities in sentencing” and directed to “report on
4 geographical sentencing disparities which result in a defendant’s sentence for
5 an offense varying substantially on the basis of the county in which it is
6 committed.”

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

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

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

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

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

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

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

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

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

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

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

11 (2) The Commission shall develop a classification system that creates
12 categories of criminal offenses on the basis of the maximum potential period of
13 imprisonment and the maximum potential fine. The Commission shall propose
14 legislation that places each of Vermont's criminal statutes into one of the
15 classification offense categories it identifies.

16 (3) When determining the appropriate category for each offense, the
17 Commission shall consider whether the existing statutory penalties for the
18 offense are appropriate or in need of adjustment better to reflect prevailing
19 average sentencing practices and the effective uses of criminal punishment.
20 For purposes of this analysis, the Commission shall for each offense consider
21 the average sentence and the average amount of time actually served. If the

1 Commission is unable to determine an appropriate classification for a
2 particular offense, the Commission shall indicate multiple classification
3 possibilities for that offense. Unless there is a compelling rationale, the
4 Commission shall not propose establishing new mandatory minimum sentences
5 or increasing existing minimum or maximum sentences.

6 (4) For purposes of the classification system developed pursuant to this
7 section, the Commission shall consider the recommendations of the Criminal
8 Code Reclassification Study Committee and **may shall** consider whether to
9 propose:

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

12 (B) the consistent use of **mental element mens rea** terminology in all
13 criminal provisions;

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

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

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

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

6 (c) Reports.

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

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

14 ~~(g) Meetings.~~

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

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

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

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

1 ~~(h) Reimbursement. For attendance at meetings during adjournment of the~~
2 ~~General Assembly, legislative members of the Commission shall be entitled to~~
3 ~~per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.~~
4 ~~§ 406. Other members of the Commission who are not employees of the State~~
5 ~~of Vermont and who are not otherwise compensated or reimbursed for their~~
6 ~~attendance shall be entitled to reimbursement of expenses pursuant to~~
7 ~~32 V.S.A. § 1010.~~

8 **Sec. 4. APPROPRIATION**

9 \$50,000.00 is appropriated from the General Fund to the Judiciary in FY
10 2019 to carry out the purposes of this act. It is the intent of the General
11 Assembly to fund at least the same amount in FY 2020.

12 **Sec. 5. REPEAL**

13 13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and
14 5452 (creation of Vermont Sentencing Commission) shall be repealed on July
15 1, 2021.

16 **Sec. 6. EFFECTIVE DATE**

17 This act shall take effect on passage.

18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE