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S.261

Introduced by Senators Sears, Baruth and White

Referred to Committee on Judiciary

Date: January 10, 2020

Subject: Crimes; criminal procedure; sentencing; life without parole

Statement of purpose of bill as introduced: This bill proposes to eliminate the option of sentencing a person to life without parole and replace it with a sentence of 25 years to life imprisonment.

~~An act relating to eliminating life without parole.~~

*An act relating to limiting the sentence of life without the possibility of parole*

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

~~Sec. 1. 13 V.S.A. § 2303 is amended to read:~~

§ 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

(a)(1) The punishment for murder in the first degree shall be imprisonment for:

(A) a minimum term of not less than 35 years and a maximum term of life; or

(B) life without the possibility of parole.

(2) The punishment for murder in the second degree shall be imprisonment for:

1 ~~(A) a minimum term of not less than 20 years and a maximum term~~  
2 ~~of life; or~~

3 ~~(B) life without the possibility of parole.~~

4 (3) Notwithstanding any other provision of law, this subsection shall  
5 apply only if the murder was committed on or after the effective date of this  
6 act July 1, 2020.

7 (b) The punishment for murder in the first degree shall be imprisonment  
8 for life and for a minimum term of 35 years unless a jury finds that there are  
9 aggravating or mitigating factors which justify a different minimum term. If  
10 the jury finds that the aggravating factors outweigh any mitigating factors, the  
11 court may set a minimum term longer than 35 years, up to and including life  
12 ~~without parole~~ imprisonment. If the jury finds that the mitigating factors  
13 outweigh any aggravating factors, the court may set a minimum term at less  
14 than 35 years but not less than 15 years.

15 (c) The punishment for murder in the second degree shall be imprisonment  
16 for life and for a minimum term of 20 years unless a jury finds that there are  
17 aggravating or mitigating factors which justify a different minimum term. If  
18 the jury finds that the aggravating factors outweigh any mitigating factors, the  
19 court may set a minimum term longer than 20 years, up to and including life  
20 ~~without parole~~ imprisonment. If the jury finds that the mitigating factors

1 ~~outweigh any aggravating factors, the court may set a minimum term at less~~  
2 than 20 years but not less than 10 years.

3 \* \* \*

4 Sec. 2. 13 V.S.A. § 7032 is amended to read:

5 § 7032. CONSECUTIVE SENTENCES

6 (a) If a person who has been sentenced to a term or terms of imprisonment  
7 is convicted of another offense punishable by imprisonment before he or she  
8 has been discharged from the former sentence or sentences, the court may  
9 sentence him or her to an additional term of imprisonment and shall specify  
10 whether this additional term shall be served concurrent with or consecutive to  
11 the prior sentence or sentences, subject to the limitations set forth in subsection  
12 (d) of this section.

13 (b) In any case where a person is convicted of two or more offenses  
14 punishable by imprisonment and is sentenced for more than one of these  
15 offenses, he or she may be sentenced to as many terms as there are offenses of  
16 which he or she is convicted. ~~When~~ Subject to the limitation set forth in  
17 subsection (d) of this section, when such multiple sentences are imposed they  
18 shall run concurrent with or consecutive to each other as the court determines  
19 at the time of sentencing and each shall run from its respective date of  
20 commitment after sentence. When such multiple sentences are in addition to a  
21 ~~prior sentence or sentences from which the person has not yet been discharged,~~

1 ~~they shall run concurrently with or consecutive to any prior sentence or~~  
2 sentences as the court shall determine at the time of sentencing.

3 (c) In all cases where multiple or additional sentences have been or are  
4 imposed, the term or terms of imprisonment under those sentences shall be  
5 determined in accordance with the following definitions:

6 (1) When terms run concurrently, the shorter minimum terms merge in  
7 and are satisfied by serving the longest minimum and the shorter maximum  
8 terms merge in and are satisfied by discharge of the longest maximum term.

9 (2) When terms run consecutively, the minimum terms are added to  
10 arrive at an aggregate minimum to be served equal to the sum of all minimum  
11 terms and the maximum terms are added to arrive at an aggregate maximum  
12 equal to the sum of all maximum terms. A person shall serve no more time on  
13 consecutive minimum sentences than the sum of the minimum terms,  
14 regardless of whether the sentences are imposed on the same or different dates.  
15 If a person has served a minimum term and subsequently incurs another  
16 criminal charge, the time the person spends in custody awaiting disposition of  
17 the new charge shall count toward the minimum term of the new sentence, if  
18 one is imposed. This subdivision shall not require the Department of  
19 Corrections to release a person from incarceration to community supervision at  
20 the person's minimum term.

1 ~~(d) When multiple sentences are imposed pursuant to this section on an~~  
2 ~~individual who was 25 years of age or younger at the time of the commission~~  
3 ~~of the offenses, the sentences shall run concurrent with each other.~~

4 Sec. 3. 13 V.S.A. § 7045 is amended to read:

5 § 7045. LIFE WITHOUT PAROLE SENTENCE PROHIBITED FOR  
6 PERSONS UNDER 18 YEARS OF AGE

7 A court shall not sentence a person to life imprisonment without the  
8 possibility of parole if the person was under 18 years of age at the time of the  
9 commission of the offense.

10 Sec. 4. 28 V.S.A. § 1 is amended to read:

11 § 1. PURPOSES

12 (a) The Department of Corrections created by 3 V.S.A. § 3081 shall have  
13 the purpose of developing and administering a correctional program designed  
14 to protect persons and property against offenders of the criminal law and to  
15 render treatment to offenders with the goal of achieving their successful return  
16 and participation as citizens of the State and community, to foster their human  
17 dignity and to preserve the human resources of the community.

18 (b) The Department shall formulate its programs and policies recognizing  
19 that almost all criminal offenders ultimately return to the community, and that  
20 the traditional institutional prisons fail to reform or rehabilitate, operating  
21 instead to increase the risk of continued criminal acts following release. The  
22 ~~Department shall develop and implement a comprehensive program that will~~

1 ~~provide necessary closed custodial confinement of frequent, dangerous~~  
2 offenders, but that also will establish as its primary objective the disciplined  
3 preparation of offenders for their responsible roles in the open community.

4 The Department shall ensure that the comprehensive program required by this  
5 subsection includes a process by which each offender sentenced to any term of  
6 imprisonment ~~other than for life without parole~~, within 30 days after receiving  
7 his or her sentence, shall begin to develop and implement a plan preparing for  
8 return to the community.

9 (c) In order to implement its programs and policies, the Department shall  
10 develop and maintain correctional facilities that shall include both residence-  
11 centered institutions and facilities reflecting nonresidence principles designed  
12 to facilitate the reintegration of the offender into the community. These  
13 facilities shall utilize the supporting resources of probation and parole services,  
14 the increased cooperation of personnel in the fields of welfare, health, and  
15 education, and the increased participation of the citizens of the State in  
16 attempts to achieve correctional purposes and objectives.

17 Sec. 5. 28 V.S.A. § 501 is amended to read:

18 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

19 An inmate who is serving a sentence of imprisonment shall be eligible for  
20 ~~parole consideration as follows:~~

1 ~~(1) If the inmate's sentence has no minimum term or a zero minimum~~  
2 ~~term, the inmate shall be eligible for parole consideration within 12 months~~  
3 ~~after commitment to a correctional facility.~~

4 ~~(2) If the inmate's sentence has a minimum term, the inmate shall be~~  
5 ~~eligible for parole consideration after the inmate has served the minimum term~~  
6 ~~of the sentence.~~

7 ~~(3) If the inmate's sentence was life without parole, the inmate shall be~~  
8 ~~eligible for parole consideration during his or her 25th year of incarceration,~~  
9 ~~unless previously released or entitled to an earlier parole consideration hearing~~  
10 ~~pursuant to other statutory provisions.~~

11 Sec. 6. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2020.~~

*Sec. 1. 13 V.S.A. § 2303 is amended to read:*

*§ 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER*

*(a) Except as provided in subsection (g) of this section:*

*(1) The punishment for murder in the first degree shall be imprisonment for:*

*(A) a minimum term of not less than 35 years and a maximum term of life; or*

*(B) life without the possibility of parole.*

*(2) The punishment for murder in the second degree shall be imprisonment for:*

*(A) a minimum term of not less than 20 years and a maximum term of life; or*

*(B) life without the possibility of parole.*

~~(3) Notwithstanding any other provision of law, this subsection shall apply only if the murder was committed on or after the effective date of this act.~~

~~(b) The punishment for murder in the first degree shall be imprisonment for life and for a minimum term of 35 years unless a jury finds that there are aggravating or mitigating factors which justify a different minimum term. If the jury finds that the aggravating factors outweigh any mitigating factors, the court may set a minimum term longer than 35 years, up to and including life imprisonment without parole. If the jury finds that the mitigating factors outweigh any aggravating factors, the court may set a minimum term at less than 35 years but not less than 15 years.~~

~~(c) The punishment for murder in the second degree shall be imprisonment for life and for a minimum term of 20 years unless a jury finds that there are aggravating or mitigating factors which justify a different minimum term. If the jury finds that the aggravating factors outweigh any mitigating factors, the court may set a minimum term longer than 20 years, up to and including life imprisonment without parole. If the jury finds that the mitigating factors outweigh any aggravating factors, the court may set a minimum term at less than 20 years but not less than 10 years.~~

\* \* \*

~~(g) Subsections (b)-(f) of this section shall apply only if the murder was committed before the effective date of this act May 1, 2006, and:~~

~~(1) the defendant was not sentenced before the effective date of this act May 1, 2006; or~~

~~(2) the defendant's sentence was stricken and remanded for resentencing pursuant to the Vermont Supreme Court's decision in *State v. Provost*, 2005 VT 134 (2005).~~

~~Sec. 2. 13 V.S.A. § 7045 is amended to read:~~

~~§ 7045. LIFE WITHOUT PAROLE SENTENCE PROHIBITED FOR  
PERSONS UNDER 18 YEARS OF AGE~~

~~A court shall not sentence a person to life imprisonment without the possibility of parole if:~~

~~(1) the person was under 18 years of age at the time of the commission of the any offense; or~~

~~(2) the person committed any offense other than aggravated murder.~~

~~Sec. 2. 28 V.S.A. § 501 is amended to read:~~

~~§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION~~

~~(a) An inmate serving any sentence other than life without the possibility of parole shall be eligible for parole consideration upon serving 35 years.~~

~~(b) An inmate who is serving a sentence of imprisonment shall be eligible for parole consideration as follows:~~

~~(1) If the inmate's sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility.~~

~~(2) If the inmate's sentence has a minimum term, the inmate shall be eligible for parole consideration after the inmate has served the minimum term of the sentence or after the inmate has served 35 years, whichever occurs first.~~

Sec. 3. 28 V.S.A. § 501 is amended to read:

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION

(a) An inmate serving any sentence other than life without the possibility of parole shall be eligible for parole consideration no later than upon serving 35 years.

(b) An inmate who is serving a sentence of imprisonment shall be eligible for parole consideration as follows:

(1) If the inmate's sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility.

(2) If the inmate's sentence has a minimum term, the inmate shall be eligible for parole consideration after the inmate has served the minimum term of the sentence or upon the inmate serving 35 years, whichever occurs first.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2020.