

Falko Schilling, Advocacy Director, ACLU of Vermont
To: House Judiciary Committee
Re: H.579 & H.580



Thank you for the opportunity to testify on H.579 and H.580 two bills that relate to sentencing reform in Vermont. Today we will provide some background on sentencing reform as well as our thoughts on H.579 and H.580. In short, we are strongly supportive of the bill's provisions that would reduce maximum sentence lengths and raise the felony threshold for property crimes. However, we do not support provisions that would increase maximum sentence lengths and fines, which are at odds with the Sentencing Commission's enabling statute, as well as the legislature's broader efforts to reduce our reliance on incarceration. We appreciate the efforts of the Vermont Sentencing Commission because we know that reforming sentencing laws can help lead Vermont to a smarter, and more humane criminal justice system.

PO Box 277
Montpelier, VT 05601
(802) 223-6304
acluvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director

Background

Between 1980 and 2009, the number of people incarcerated in Vermont's unified corrections system rose by 363 percent to its peak of 2,220 people.ⁱ Since then, Vermont has instituted a slate of policies that have significantly reduced the number of people we incarcerate to approximately 1700, but our prison population is once again beginning to rise.ⁱⁱ

Vermont was not alone in seeing a dramatic increase in the number of people we incarcerate. From 1980 to 2010, there was a 222% increase in state prison populations across the nation, and fully half of that growth was due to an increase in time served in prison for all offenses.ⁱⁱⁱ Lengths of prison stays in the states increased by thirty-three percent from 1993 to 2009 alone.^{iv}

A growing body of evidence indicates that more severe sentences are often unnecessarily punitive, have diminishing returns, and do not effectively deter crime or decrease recidivism.^v For instance, a National Bureau of Economic Research study found that prison sentences longer than twenty months had "close to no effect" on reducing recidivism upon release.^{vi} Other reports have also determined that lengthy sentences do not prevent or control crime^{vii} and may in fact result in increased recidivism.^{viii}

Additional evidence shows that recidivism rates decline with age—people "age out" of criminal conduct—such that lengthy sentences are often an inefficient and ineffective approach to reducing reincarceration.^{ix} Incarceration also adversely affects those connected to prisoners. For instance, children who have an incarcerated household member have a higher risk of poor health-related quality of life in adulthood.^x In Vermont, it is estimated that more than 6,000 children a year are impacted by parental incarceration.^{xi}

In sum, longer prison sentences do not necessarily deter crime or make communities safer. Vermont can better preserve public safety and taxpayer resources, while ensuring people are still held responsible for their actions, without handing down unnecessarily long and punitive sentences. Sentencing reform is essential to that effort.

Not surprisingly, that is exactly what the public wants—more than two-thirds of

Vermonters support reducing the state's incarceration rate, and 70 percent *specifically* say they support reforming Vermont's sentencing laws to reduce sentence lengths, consistent with current research and best practices.^{xii}

Felony Thresholds

The ACLU of Vermont strongly supports language contained in H.579 to increase Vermont's felony threshold for property crimes. Vermont currently has the lowest felony theft threshold in the region at \$900. Felony convictions can have a long lasting and devastating impact on the life of an individual. We applaud the commission's recommendation to increase the felony threshold to a level that guarantees people will only receive felony convictions for more serious crimes

This proposal could have a positive impact in the lives of many Vermonters, and help reduce our state's prison population, but it is unlikely to lead to higher rates of crime. A 2016 analysis by the Pew Charitable Trusts on the impact of felony thresholds on crime reached three important conclusions to support this assertion.

1. *Raising the felony theft threshold has no impact on overall property crime or larceny rates.*
2. *States that increased their thresholds reported roughly the same average decrease in crime as the 20 states that did not change their theft laws.*
3. *The amount of a state's felony theft threshold—whether it is \$500, \$1,000, \$2,000, or more—is not correlated with its property crime and larceny rates.*^{xiii}

For these reasons we urge the committee to move forward with enacting the changes necessary to increase the felony threshold for property crime as recommended by the Sentencing Commission and contained in H.579.

Reduction of Sentence Lengths

The ACLU of Vermont supports language contained in H.579 and H.580 would decrease existing maximum sentence lengths for property and other crimes. In our letter to the sentencing commission at the start of their work in 2018 we stated *“Because sentencing policies have a tremendous impact on incarceration rates, we respectfully ask that, in the process of revising Vermont's sentencing guidelines, this Commission prioritize the substantial reduction of sentence lengths and elimination of mandatory minimums, for both violent and non-violent crimes. At a minimum, this Commission must not increase the sentence length for any crime, nor should it impose any new mandatory minimums.”* We still hold this position and applaud the many reductions in sentence length found in these pieces of legislation, while recognizing there is more work to do in future legislation.

We do however oppose the instances of increased maximum sentence lengths and maximum financial penalties contained in H.579. We recommend that the committee make reductions in these sentences and financial penalties for those crimes. The Sentencing Commission's enabling legislation states *“Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences.”*^{xiv} Based on the testimony provided to the committee to date, and the Sentencing Commission Report submitted to this committee on November 27 2019, there is not a compelling rationale for the legislature to increase the criminal penalties as described in the bill and highlighted in Attachment C.^{xv} Furthermore, increasing



PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director

sentence lengths in the course of a sentencing reform effort would run counter to the legislature's laudable, ongoing efforts to reduce Vermont's reliance on incarceration.

Conclusion

We appreciate the efforts of the Vermont Sentencing Commission and of this committee to address the impacts of excessive sentences. We are strongly supportive of the bill's provisions that would reduce maximum sentence lengths and raise the felony threshold for property crimes. We do not support provisions that would increase maximum sentence lengths and fines. We also look forward to working with this committee on broader and sentencing reforms in the future. Thank you, and I would be happy to answer questions.



PO Box 277
Montpelier, VT 05601
(802) 223-6304
acluvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director

ⁱ The Council of State Governments Justice Center, Justice Reinvestment State Brief: Vermont (2012), https://csgjusticecenter.org/wp-content/uploads/2012/12/Vermont_State_Brief.pdf.

ⁱⁱ The Council of State Governments Justice Center, Vermont Justice Reinvestment II Working Group Meeting December 16, 2019 (2019), slide 20. https://csgjusticecenter.org/wp-content/uploads/2020/01/JR-in-Vermont-Fourth-Presentation_16JAN2020.pdf

ⁱⁱⁱ "Criminal Justice Facts," THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Jan. 27, 2020).

^{iv} DR. JAMES AUSTIN, ET AL., BRENNAN CENTER FOR JUSTICE, HOW MANY AMERICANS ARE UNNECESSARILY INCARCERATED? 5 (2016), https://www.brennancenter.org/sites/default/files/publications/Unnecessarily_Incarcerated_0.pdf.

^v See, e.g., DAVID ROODMAN, OPEN PHILANTHROPY PROJECT, THE IMPACTS OF INCARCERATION ON CRIME 48 (Sept. 2017), available at <https://blog.givewell.org/wp-content/uploads/2017/09/The-impacts-of-incarceration-on-crime-10.pdf>; THE URBAN INSTITUTE, A MATTER OF TIME: THE CAUSES AND CONSEQUENCES OF RISING TIME SERVED (July 2017), <https://apps-staging.urban.org/features/long-prison-terms/intro.html>.

^{vi} ILYANA KUZIEMKO, NAT'L BUREAU OF ECON. RESEARCH, GOING OFF PAROLE: HOW THE ELIMINATION OF DISCRETIONARY PRISON RELEASE AFFECTS THE SOCIAL COST OF CRIME 21, Working Paper No. 13380 (2007), <https://www.nber.org/papers/w13380>.

^{vii} See, e.g., COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 155 (2014), available at <https://www.nap.edu/read/18613/chapter/7>; David Abrams, *The Prisoner's Dilemma: A Cost Benefit Approach to Incarceration*, 98 IOWA L.J. 907, 936 (2013).

^{viii} See, e.g., Jason Rydberg & Kyleigh Clark, *Variation in the Incarceration Length-Recidivism Dose-Response Relationship*, 125 J. OF CRIM. JUSTICE (2016), https://www.academia.edu/27391540/Variation_in_the_Incarceration_Length-Recidivism_Dose-Response_Relationship; MICHAEL MUELLER-SMITH, THE CRIMINAL AND LABOR MARKET IMPACTS OF INCARCERATION 25 (2015), <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.

^{ix} KIM STEVENS HUNT & BILLY EASLEY, U.S. SENTENCING COMM'N, THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

^x Annie Gjelsvik, et al., *Adverse childhood events: incarceration of household members and health-related quality of life in adulthood*, 25 J. HEALTH CARE POOR UNDERSERVED 1169 (Aug. 2014).

^{xi} THE RIGHTS OF CHILDREN OF ARRESTED AND INCARCERATED PARENTS, Submitted to the Vermont Legislature January 15th, 2015. Page 5 available at <http://legislature.vermont.gov/assets/Legislative-Reports/Final-Act-168-Report-1-14-15.pdf>

^{xii} https://www.acluvt.org/sites/default/files/aclu_vt_cjr_poll_results_memo.pdf

xiii <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-effects-of-changing-felony-theft-thresholds>

xiv Act 142 of 2018 Sec. 3 (a)(3)

xv <https://legislature.vermont.gov/assets/Legislative-Reports/Act-142-2018-Report.pdf>



PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director