

* * * Probation * * *

Sec. 2. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless the term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which the respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted, and the minimum term shall be not less than the shortest term fixed by law for the offense. If the court suspends a portion of the sentence, the unsuspended portion of the sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as set forth in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody as follows:

(1) The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense and all time served on probation prior to the time the violation is filed.

(3) A defendant who has received pre-adjudication treatment in a residential setting for a substance use disorder after the charge has been filed shall earn a reduction of one day in the offender's minimum and maximum sentence for each day that the offender receives the inpatient treatment.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at the jail or the place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall report to probation and parole as directed by the court and begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at the time.

Sec. 3. 28 V.S.A. § 205 is amended to read:

§ 205. PROBATION

(a)(1) After passing sentence, a court may suspend all or part of the sentence and place the person so sentenced in the care and custody of the Commissioner upon such conditions and for such time as it may prescribe in accordance with law or until further

order of court. All terms of probation set by the court shall be for a specific duration, not to exceed the statutory maximum term of imprisonment for the offense, except as provided in subdivisions (2) and (3) of this subsection.

(2) The term of probation for misdemeanors shall be for a specific term not to exceed two years unless the court, in its sole discretion, specifically finds that the interests of justice require a ~~longer or an indefinite~~ period of probation that exceeds two years.

(3)(A) The term of probation for nonviolent felonies shall not exceed four years or the statutory maximum term of imprisonment for the offense, whichever is less, unless the court, in its sole discretion, specifically finds that the interests of justice require a ~~longer or an indefinite~~ period of probation that exceeds four years or the statutory maximum term of imprisonment for the offense, whichever is less.

(B) As used in this subdivision, “nonviolent felonies” means an offense that is not:

- (i) a listed crime as defined in 13 V.S.A. § 5301(7); or
- (ii) an offense involving sexual exploitation of children in violation of 13

V.S.A. chapter 64.

(4) Nothing in this subsection shall prevent the court from terminating the period of probation and discharging a person pursuant to section 251 of this title.

(5) The probation officer of a person on probation for a specific term shall review the person’s case file during probation and, not less than 45 days prior to the expiration of the probation term, may file a petition with the court requesting the court to extend the period of probation for a specific term not to exceed one year in order to provide the

person the opportunity to complete programming consistent with special conditions of probation. A hearing on the petition for an extension of probation under this subsection shall comply with the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal Procedure.

(b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for which the offender has been placed on probation shall have the right to request and receive from the Department of Corrections information regarding the offender's general compliance with the specific conditions of probation. Nothing in this section shall require the Department of Corrections to disclose any confidential information revealed by the offender in connection with participation in a treatment program.

(c)(1) Unless the court in its discretion finds that the interests of justice require additional standard and special conditions of probation, when the court orders a specific term of probation for a qualifying offense, the offender shall be placed on administrative probation, which means that the only conditions of probation shall be that the probationer:

(A) register with the Department of Corrections' probation and parole office in his or her district;

(B) notify the probation officer of his or her current address each month;

(C) within 72 hours, notify the Department of Corrections if probable cause is found for a criminal offense during the term of probation; and

(D) not be convicted of a criminal offense during the term of probation.

(2) As used in this subsection, "qualifying offense" means:

(A) Unlawful mischief under 13 V.S.A. § 3701.

(B) Retail theft under 13 V.S.A. §§ 2575 and 2577.

(C) Operating after suspension or revocation of license under 23 V.S.A. § 674(a).

(D) Bad checks under 13 V.S.A. § 2022.

(E) Theft of services under 13 V.S.A. § 2582.

(F) Disorderly conduct under 13 V.S.A. § 1026, unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).

(G) Theft of rented property under 13 V.S.A. § 2591.

(H) Operation without consent of owner under 23 V.S.A. § 1094(a).

(I) Petit larceny under 13 V.S.A. § 2502.

(J) Negligent operation of a motor vehicle under 23 V.S.A. § 1091(a).

(K) False reports to law enforcement under 13 V.S.A. § 1754.

(L) Setting fires under 13 V.S.A. § 508.

(M) [Repealed.]

(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b) unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).

(O) Unlawful trespass under 13 V.S.A. § 3705(a).

(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).

(3) Nothing in this subsection shall prohibit a court from requiring participation in the Restorative Justice Program established in chapter 12 of this title.

(d) All probationers, including those currently serving a term of probation, shall receive one day of credit towards the probationer's minimum sentence for each day served on probation. The probationer shall cease accruing credit towards the minimum

sentence the day an arrest warrant for the probationer is filed. If the court finds that the probationer violated the terms of probation and returns the person to probation, the court shall determine whether the person may again accrue credit towards the minimum sentence and when the accrual shall commence. The court shall indicate the amount of credit to apply on the sentencing document. If the court finds no violation occurred, there shall be no interruption in the probationer's accrual of credit.

(3) Once a probationer accrues credit equal to the imposed maximum term of imprisonment for the offense, the court shall terminate the probation and discharge the person pursuant to section 251 of this title, unless the court set the probation term for longer than the imposed maximum term of imprisonment for the offense pursuant to subdivisions (2) or (3) of subsection (a) of this section.

Sec. 4. 28 V.S.A. § 304 is amended to read:

§ 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF
PROBATION

(a) Revocation and imposition of sentence.

(1) If a violation is established by a proceeding conducted in accordance with section 302 of this title, the court may, in its discretion, revoke probation and require the probationer to serve the remainder of the sentence that was suspended or order that the remainder of the sentence be served in the community pursuant to the provisions of chapter 6 of this title.

(2) In the event the court revokes probation and requires the probationer to serve the suspended sentence pursuant to this section, the duration of the remaining suspended sentence shall be reduced in accordance with subsection 205(d) of this title and 13 V.S.A.

§ 7031(b)(2). The court shall indicate the total number of days credited towards the minimum sentence on the sentencing document.

(b) Alternative sanctions. As an alternative to revocation and imposition of sentence as provided in subsection (a) of this section, the court, in its discretion, after it has established that a violation occurred ~~a violation has been established~~, may:

(1) continue the probationer on the existing sentence;

(2) effect, in accordance with subsection 253(b) of this title, necessary or desirable changes or enlargements in the conditions of probation;

(3) conduct a formal or informal conference with the probationer in order to reemphasize to him or her the necessity of compliance with the conditions of probation;

(4) issue a formal or informal warning to the probationer that further violations may result in revocation of probation by the court; or

(5) continue the probationer on the existing sentence, but require the probationer to serve any portion of the sentence.

(c) Guidelines. Prior to ordering either revocation or an alternative sanction for a violation of probation in accordance with subsection (b) of this section, the court shall consider, but has complete discretion whether to follow, sanction guidelines established by the Department of Corrections pursuant to subsection (e) of this section.

(d) Discretion of the court. No plea agreement shall limit the court's discretion under this section.

(e) Rules. The Department of Corrections shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation violations as an alternative to revocation and imposition of the remainder of the original sentence. These

guidelines do not grant the Department any authority to impose sanctions for probation violations.

Sec. 14. 28 V.S.A. § 724 is amended to read:

§ 724. TERMS AND CONDITIONS OF ~~CONDITIONAL REENTRY~~

COMMUNITY SUPERVISION FURLOUGH

(a)(1) The Department shall identify in the terms and conditions of ~~conditional reentry~~ community supervision furlough those programs necessary to reduce the offender's risk of reoffense and to promote the offender's accountability for progress in the reintegration process. The Department shall make all determinations of violations of conditions of community supervision furlough pursuant to this subchapter and any resulting change in status or termination of community supervision furlough status.

(2) In order for the Department to revoke furlough or interrupt furlough status for 30 days or longer, the technical violation shall:

(A) be substantially related to a risk factor for reoffense of the prior crime or a risk factor for committing a new crime; and

(B) create a danger to the public.

(b) Any interruption of an offender's community supervision furlough after the Department has found a technical violation of furlough conditions shall trigger a Department Central Office case staffing review and Department notification to the Office of the Defender General if the interruption will exceed 30 days.

(c) An offender whose furlough status is revoked or interrupted for 30 days or longer shall have the right to [appeal the Department's determination de novo to the Civil Division of the Superior Court] OR [an on the record review of the Department's

determination in the Civil Division of the Superior Court] in accordance with Rule 74 of the Vermont Rules of Civil Procedure. The offender shall have the burden of proving by a preponderance of the evidence that the Department [wrongfully imposed a furlough revocation or interrupt that exceeds 30 days] OR [abused its discretion in imposing a furlough revocation or interrupt that exceeds 30 days].

(d) As used in this section, “technical violation” shall mean a violation of conditions of furlough that does not constitute a new crime.

Sec. 18. 28 V.S.A. § 808e is amended to read:

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

(a) The Commissioner of Corrections may issue a warrant for the arrest of a person who has absconded from furlough status in violation of ~~subdivision~~ subsection 808(a)(6), ~~subsection 808(e) or 808(f)~~, or section 808a, 808b, or 808c of this title, requiring the person to be returned to a correctional facility. A law enforcement officer who is provided with a warrant issued pursuant to this section shall execute the warrant and return the person who has absconded from furlough to the Department of Corrections.

(b) A person for whom an arrest warrant is issued pursuant to this section shall not earn credit toward service of his or her sentence for any days that the warrant is outstanding.

Sec. 18a. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

(a) A person who, while in lawful custody:

(1) escapes or attempts to escape from any correctional facility or a local lockup shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or

(2) escapes or attempts to escape from an officer, if the person was in custody as a result of a felony, shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or if the person was in custody as a result of a misdemeanor, shall be imprisoned for not more than two years, or fined not more than \$1,000.00, or both.

(b)(1) A person shall not, while in lawful custody:

(A) fail to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

(B) fail to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 808(a)(1)-(5), or § 723;

(C) escape or attempt to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

(D) elope or attempt to elope from the Vermont Psychiatric Care Hospital or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence.

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

(3) ~~It shall not be a violation of subdivision (1)(A), (1)(B), or (1)(C) of this subsection (b) if~~ If the person is on furlough status pursuant to 28 V.S.A. § 723 808(a)(6), 808(e), 808(f), or 808a, 808b, or 808e a violation of this subdivision (1) of this subsection (b) requires a showing that the person intended to escape from furlough.

(c) All sentences imposed under subsection (a) of this section shall be consecutive to any term or sentence being served at the time of the offense.

(d) As used in this section:

(1) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(2) “Participating hospital” means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(3) [Repealed.]

Sec. 19. RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM STUDY AND RECCOMENDATIONS; VERMONT SENTENCING COMMISSION

(a) During the 2020 legislative interim, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, the Executive Director of Racial Equity, the Chief Superior Judge, the Attorney General, the Defender General, the Department of Corrections, and the Executive Director of the Department of State’s Attorneys and Sheriffs shall work with Crime Research Group to identify existing data that explores the relationships between demographic factors and sentencing outcomes and determine whether and where current data systems and collections are insufficient for additional

analyses and what staffing or resources are needed to support more robust reporting. Relevant data shall include plea agreements, sentence types and length, criminal history, offense severity, and any other metric that may further identify differences in how people are charged and sentenced by county, race, and gender. The stakeholders identified in this subsection shall also:

(1) perform an initial analysis of sentencing patterns across the State to identify where the use and length of incarceration may result in or exacerbate racial disparities, and make any related proposals for legislative action, including recommendations for further study; and

(2) jointly report their findings pursuant to this subsection and any associated recommendations pursuant to subdivisions (1) and (2) of this subsection to the Joint Legislative Justice Oversight Committee and the Vermont Sentencing Commission on or before December 1, 2020. The report shall include any dissenting opinions among the stakeholders.

(b)(1) The Vermont Sentencing Commission shall consider relevant findings and recommendations developed by the stakeholder group pursuant to subsection (a) of this section and:

(A) consider whether changes to Vermont's sentencing structure are necessary to address the findings and implement the recommendations developed by the stakeholder group; and

(B) if it deems appropriate, issue nonbinding guidance for offenses for which there are racial and geographic disparities in sentencing.

(2) On or before February 26, 2021, the Vermont Sentencing Commission shall report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions on its determinations pursuant to subdivision (1) of this subsection.