

* * * Probation * * *

1
2 Sec. 2. 13 V.S.A. § 7031 is amended to read:

3 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

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

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

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

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

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

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

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

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

7 § 205. PROBATION

8 (a)(1) After passing sentence, a court may suspend all or part of the
9 sentence and place the person so sentenced in the care and custody of the
10 Commissioner upon such conditions and for such time as it may prescribe in
11 accordance with law or until further order of court. All terms of probation set
12 by the court shall be for a specific duration, not to exceed the statutory
13 maximum term of imprisonment for the offense.

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

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

1 exceeds four years or the statutory maximum term of imprisonment for the
2 offense, whichever is less.

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

5 (i) a listed crime as defined in 13 V.S.A. § 5301(7); or

6 (ii) an offense involving sexual exploitation of children in
7 violation of 13 V.S.A. chapter 64.

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

11 (5) The probation officer of a person on probation for a specific term
12 shall review the person’s case file during probation and, not less than 45 days
13 prior to the expiration of the probation term, may file a petition with the court
14 requesting the court to extend the period of probation for a specific term not to
15 exceed one year in order to provide the person the opportunity to complete
16 programming consistent with special conditions of probation. A hearing on the
17 petition for an extension of probation under this subsection shall comply with
18 the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal
19 Procedure.

20 (b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for
21 which the offender has been placed on probation shall have the right to request

1 and receive from the Department of Corrections information regarding the
2 offender’s general compliance with the specific conditions of probation.

3 Nothing in this section shall require the Department of Corrections to disclose
4 any confidential information revealed by the offender in connection with
5 participation in a treatment program.

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

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

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

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

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

19 (2) As used in this subsection, “qualifying offense” means:

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

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

1 (C) Operating after suspension or revocation of license under
2 23 V.S.A. § 674(a).

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

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

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

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

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

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

10 (J) Negligent operation of a motor vehicle under 23 V.S.A.
11 § 1091(a).

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

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

14 (M) [Repealed.]

15 (N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)
16 unless the original charge was a listed offense as defined in 13 V.S.A.
17 § 5301(7).

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

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

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

4 (d)(1) A probationer shall receive one day of credit towards the
5 probationer’s minimum sentence for each day served on probation. The
6 probationer shall cease accruing credit towards the minimum sentence the day
7 an arrest warrant for the probationer is filed. If the court finds that the
8 probationer violated the terms of probation and returns the person to probation,
9 the court shall determine whether the person may again accrue credit towards
10 the minimum sentence and when the accrual shall commence. The court shall
11 indicate the amount of credit to apply on the sentencing document. If the court
12 finds no violation occurred, there shall be no interruption in the probationer’s
13 accrual of credit.

14 (2) Once a probationer accrues credit equal to the statutory maximum
15 term of imprisonment for the offense, the court shall terminate the probation
16 and discharge the person pursuant to section 251 of this title.

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

18 § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF

19 PROBATION

20 (a) Revocation and imposition of sentence.

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

6 (2) In the event the court revokes probation and requires the probationer
7 to serve the suspended sentence pursuant to this section, the duration of the
8 remaining suspended sentence shall be reduced in accordance with
9 subsection 205(d) of this title and 13 V.S.A. § 7031(b)(2). The court shall
10 indicate the total number of days credited towards the minimum sentence on
11 the sentencing document.

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

16 (1) continue the probationer on the existing sentence;

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

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

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

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

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

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

12 (e) Rules. The Department of Corrections shall adopt rules pursuant to
13 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation
14 violations as an alternative to revocation and imposition of the remainder of
15 the original sentence. These guidelines do not grant the Department any
16 authority to impose sanctions for probation violations.