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TO: House and Senate Committees on Judiciary

FROM: Hon. Thomas Zonay, Chair  
Commission on Sentencing Disparities and Criminal Code Reclassification  
("Sentencing Commission")

RE: Sentencing Commission Report pursuant to Act 142 (2018), *An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification*

DATE: November 27, 2019

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## Executive Summary

In 2018, the Vermont General Assembly passed Act No. 142 reconstituting the Vermont Sentencing Commission for the express purpose of overseeing criminal sentencing practices in the State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the General Assembly. As of the submission of this report, the Commission has met 11 times to discuss and formulate recommendations relating to the specific charges included in the enabling legislation. The Commission recommends the following:

### Recommendations Regarding Classification of Criminal Offenses

The Commission recommends enactment of legislation consistent with its interim proposal on Classification submitted on March 21, 2019 as to the scheme for sentences to imprisonment. The Commission will follow-up with a classification scheme as to fines at a later date following further review. See Attachment A.

The Commission recommends enactment of legislation consistent with its attached proposal on classification of sexual offenses. See Attachment B.

The Commission recommends enactment of legislation consistent with its attached proposal on classification of property crimes. See Attachment C.

## Additional Recommendations

The Commission recommends expanding and fully funding the alternative justice options already in existence, such as Diversion, Tamarack, and drug treatments courts.

The Commission recommends that the Legislature consider the merits of permitting a judge to send a case to Diversion or Tamarack in a manner consistent with constitutional separation of powers and established procedures from other jurisdictions.

The Commission recommends establishing consistent statewide criteria for drug treatment court eligibility and standard practices for referrals.

The Commission recommends that the Legislature re-examine the various possession thresholds in Title 18, Chapter 84 and consider increasing the weight and/or dosage upper limits for misdemeanor possession crimes to better reflect current personal use amounts.

The Commission recommends enactment of legislation consistent with its attached proposal on amending 33 V.S.A. § 5204a. See Attachment D.

The Commission has identified additional issues that require further consideration and analysis. The Commission intends to make recommendations in a supplemental report to the General Assembly on or before November 30, 2020 with respect to the following:

the classification of additional crimes beyond sexual and property crimes;

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

the development of a classification scheme for all fines; and

the reconciliation of categories of crimes within existing Vermont statutes, to include listed crimes and designated crimes.

## Report Requirements

The Vermont General Assembly, through Act No. 142 (2018), *An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification*, reconstituted the Commission on Sentencing Disparities and Criminal Code Reclassification (“Sentencing Commission” or “Commission”). The enabling legislation directs the Sentencing Commission to develop responses to the significant impacts that increased opioid addiction have had on the criminal justice system. Specifically, the enabling legislation requires the Commission to consider:

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

Section 3 of Act 142 further directs the Sentencing Commission to develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine. In developing this classification system, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences. Finally, as part of the classification proposal, the enabling legislation directs the Commission to consider whether to propose:

- (1) rules of statutory interpretation specifically for criminal provisions;
- (2) the consistent use of *mens rea* terminology in all criminal provisions;
- (3) a comprehensive section of definitions applicable to all criminal provisions;
- (4) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses; and
- (5) a redefinition of what constitutes an attempt in Vermont criminal law, including whether the Model Penal Code’s definition of attempt should be adopted in Vermont.

Act 40 (2019), *An act relating to miscellaneous court and Judiciary related amendments*, directs the Sentencing Commission, on or before December 15, 2019, to propose alternatives, in light of 33 V.S.A. § 5204a, for providing the court with jurisdiction over cases where a person under 18 years of age commits a criminal offense that is not a listed crime under 13 V.S.A. § 5301(7) and is not charged with the offense until after turning 18 years of age. The report required under Act 40 is included herein as Attachment D.

Act 32 (2019), *An act relating to sealing and expungement of criminal records*, directs the Sentencing Commission to conduct a comprehensive assessment of the statutes governing the expungement and sealing of criminal history records in Vermont, including reviewing the crimes eligible for expungement or sealing, the process by which criminal history records are expunged or sealed, the mechanism by which expunged or sealed records are indexed, and the effect of sealing or expungement. The report required pursuant to Act 32 regarding expungement was timely submitted as directed by the legislation.

## Background on Sentencing Commission

The enabling legislation set forth individual titles of certain persons who would serve on the Sentencing Commission, as well as certain entities which would make appointments. At its initial meeting on August 7, 2018, Chief Justice Paul Reiber appointed Judge Thomas A. Zonay to serve as Chair of the Commission and Rebecca Turner to serve as Vice-chair. The other members of the Commission were: Chief Superior Judge Brian Grearson, Judge John Treadwell, Senator Richard Sears, Representative Martin LaLonde, David Scherr on behalf of the Attorney General, Defender General Matthew Valerio, Executive Director of the Department of State's Attorneys and Sheriffs John Campbell, Deputy Defender General Marshall Pahl, Windsor County State's Attorney David Cahill, Vermont Bar Association appointee Jordana Levine, Commissioner Lisa Menard<sup>1</sup>, Commissioner Thomas Anderson<sup>2</sup>, Executive Director of the Vermont Center for Crime Victim Services Chris Fenno<sup>3</sup>, and Executive Director of the Vermont Crime Research Group Karen Gennette.

The Sentencing Commission has met 11 times as of the submission of this Report. In addition to reviewing materials provided to it at its meetings, the Sentencing Commission also heard from Judge Michael Kainen. Judge Kainen had been the Executive Director of the prior iteration of the Sentencing Commission. He provided the Commission with his insight into the work of the prior Sentencing Commission and identified where, in his assessment, issues arose that prevented the prior Commission from being able to operate effectively.

In order to most efficiently evaluate the questions and issues it needed to address, the Sentencing Commission concluded that it would be appropriate to appoint committees to address identified tasks and to report back to the full Commission. In furtherance of this determination, Judge Zonay created three committees and apportioned assignments to each as follows:

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<sup>1</sup> Currently Monica Weeber serves on the Commission as the designee for the Commissioner of the Department of Corrections.

<sup>2</sup> Currently Commissioner Michael Shirling serves on the Commission.

<sup>3</sup> Currently Elaine Boyce serves on the Commission as the designee for the Executive Director of the Vermont Center for Crime Victim Services.

### **Committee A:**

Whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses (13 V.S.A. § 5452(c)(1));

Whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses (13 V.S.A. § 5452(c)(2)); and

Decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses (Act 142, Sec. 3, § 4(D)).

### **Committee B:**

How to maximize treatment for offenders as a response to offenses committed as a result of addiction (13 V.S.A. § 5452(c)(3)).

### **Committee C:**

Review existing sentencing law and practice to determine whether statutory penalties are appropriate and to address sentencing classification. Also, except for decriminalization under Sec. 3, § 4(D), address the matters identified in Sec. 3, § 4 of enabling legislation.

## **Findings and Recommendations**

### **1. Whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses**

In considering its charge on this question, the Sentencing Commission, through Committee A, reviewed multiple datasets from the Crime Research Group (CRG) and DOC. CRG data included the following: (1) “Other Charges Filed with Drug Charges 2014-2017,” and (2) “Misdemeanor drug charges referred to diversion statewide 2014-2017.” DOC data relating to incarcerated individuals on the opiate withdrawal scale and those diagnosed with opioid use disorder (OUD) were also reviewed.

The Commission further considered whether it was feasible to create a process to determine (1) whether an offense was committed “as a result of opioid addiction,” and (2) for those offenses determined to have resulted from an opioid addiction whether the offense should then be considered a civil offense.

With respect to the first question, Committee A identified two ways a criminal offense of any nature could be determined to have been “committed as a result of opioid addiction.” First, the State’s Attorney at the charging stage could determine the offense was “committed as a result of opioid addiction” and file a civil rather than a criminal charge (assuming a civil offense is available). Second, the criminal rules could be amended—or a statute enacted—to provide a defendant the right to have a judicial determination of whether an offense was “committed as a result of opioid addiction.” That is, the court would hold an evidentiary hearing to determine whether the charged criminal offense or offenses were “committed as a result of opioid addiction.” Questions regarding the burden of proof in such a hearing (*e.g.*, preponderance or clear and convincing evidence) and who bears that burden would have to be determined either by rule or by case law in the absence of a statute.

In addition, Committee A noted that what is meant by “committed as a result of opioid addiction” would need to be further defined. Does the offense have to be *exclusively* committed as a result of opioid addiction or only *partially* motivated by addiction? The Commission believes that complete study of this question would require development and analysis of data that has not yet been collected.

Putting aside the potential constitutional and practical challenges of such a scheme, including those which could arise through carving out a specific class of drugs for special and more lenient treatment, the inevitable burdens such a process would place on an already overburdened criminal justice system must also be considered. It would seem highly probable that defendants who use opioids and are charged with a crime would seek to have his/her criminal offense transformed into a civil offense if that result were available.

For those cases in which a determination is made the offense was “committed as a result of opioid addiction,” there would then have to be a civil offense identified. “Civil” penalties often only involve the imposition of a fine. Thus, the Legislature could consider creating a single catch-all civil offense for any criminal case in which it is determined the offense was “committed as a result of opioid addiction” and set a specific fine amount or a fine range to be determined by the court based on the severity of the offense and other factors—*e.g.*, ability to pay. If appropriate, the Legislature also could consider other civil sanctions, as long as they do not actually amount to “punitive” criminal penalties. *See United States v. Ward*, 448 U.S. 242, 249 (1980) (“We turn then to consider whether Congress, despite its manifest intention to establish a civil, remedial mechanism, nevertheless provided for sanctions so punitive as to ‘transfor[m] what was clearly intended as a civil remedy into a criminal penalty.’” (citation omitted)); *Town of Hinesburg v. Dunkling*, 167 Vt. 514, 527 (Vt. 1998).

Alternatively, the Legislature could consider creating a parallel civil code for each criminal offense determined to have been “committed as a result of opioid addiction.” The Legislature would also have to determine whether a defendant has the right to a jury trial, a public defender, and what the State’s burden of proof would be once a criminal case becomes a proceeding involving a civil offense. In addition, the issue of repeat offenders would also need to be addressed and a determination be made as to whether second or subsequent civil offenses would result in criminal prosecution and the conduct would no longer qualify for treatment as a civil

matter. A further concern to be addressed relates to the potential collateral consequences even a civil finding may bring upon an individual.

One identified limitation of making historically criminal offenses civil offenses is the lack of sentencing alternatives for civil offenses like those currently available for criminal offenses. *See* 13 V.S.A. § 7030. Indeed, absent legislation expanding the sanctions for civil offenses to include some form of ongoing supervision or a civil commitment law for drug treatment, classifying criminal offenses committed as a result of opioid addiction as civil offenses may have undesired consequences. While an individual may not wind up with a criminal conviction, he/she is also unlikely to get help for his/her addiction and may pose an ongoing risk to the public.

Finally, the Commission noted that if the intent of this directive is to divert individuals addicted to opioids from the criminal justice system, Vermont currently has a variety of programs for doing so, including through deferred sentences, diversion, and drug treatment courts. These programs are designed to allow a defendant to avoid criminal liability, or reduce liability, provided he/she complies with various conditions, which often include participating in drug treatment. Developing methods to more fully utilize these programs and creating strategies that provide equal access to them should be fully explored and appear to be a more efficient means of achieving the goal of treating criminal offenses truly and solely motivated by opioid or other drug addiction as a public health issue.

**Recommendation:**

The Commission has not voted to recommend making offenses committed as the result of opioid addiction, or any other drug addition, be civil rather than criminal offenses.

The Commission recommends expanding and fully funding the alternative justice options already in existence, such as Diversion, Tamarack, and drug treatments courts. A majority of the Commission would also recommend that the Legislature consider the merits of permitting a judge to send a case to Diversion or Tamarack in a manner consistent with constitutional separation of powers and established procedures from other jurisdictions.

The Commission further recommends establishing consistent statewide criteria for drug treatment court eligibility and standard practices for referrals. As to this recommendation, the Commission believes that the development and implementation of drug treatment courts should be done on a statewide basis and not be delegated to the various counties to decide whether to implement such a program, thereby resulting in different opportunities and outcomes for people facing similar issues throughout the State.

**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**

As it pertains to Question 2, the Sentencing Commission reviewed other states' efforts at reclassification and "de-felonization" generally. Based on its review, the Commission did not identify any state that has reclassified offenses in the manner contemplated within Question 2. A Vermont Legislative Counsel report from 2017 similarly found that "[n]o U.S. state has taken the

step of decriminalizing illicit drugs other than marijuana.” However, it does appear that the issue of civil reclassification has come up in certain states—*e.g.*, Hawaii (a legislative report) and Maryland (a proposed bill)—without such reclassification ultimately being adopted in those states.

Although research has not yet uncovered other state efforts to reclassify sale or possession of drugs from criminal to civil offenses, the Commission is aware that other states have undertaken efforts to “de-felonize” offenses. Accordingly, although outside the scope of Question 2, the Commission reviewed an October 2018 report by the Urban Institute identifying five states that reclassified felony drug possession crimes as misdemeanors; according to the report, those state laws also share certain “policy details” (*e.g.*, weights not specified). The report identifies those states as Alaska, California, Connecticut, Oklahoma, and Utah. *Id.* at 5.

While no formal vote was taken on a specific “de-felonization” recommendation, members of the Sentencing Commission largely agree that the felony weight and/or dosage thresholds for many of the Title 18, Chapter 84 (Possession and Control of Regulated Drugs) crimes do not reflect current personal use estimates for a typical heavy user in Vermont.

### **Recommendation:**

The Commission has not voted to recommend classifying the possession or sale of specific, lesser amounts of opioids and other regulated drugs as civil rather than criminal offenses.

The Legislature should re-examine possession thresholds in Title 18, Chapter 84 and consider increasing the weight and/or dosage upper limits for misdemeanor possession crimes to better reflect current personal use amounts.

### **3. How to maximize treatment for offenders as a response to offenses committed as a result of opioid addiction**

Committee B sent out surveys and interviewed a number of local treatment providers to solicit their perspective on the barriers to accessing treatment. To date, Committee B has not presented any formal recommendations to the Sentencing Commission but will be working in conjunction with the Council for State Governments’ Justice Reinvestment team to develop specific recommendations with respect to this charge. As such, the Commission expects to be addressing this question as it continues its work moving forward.

### **4. Develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine**

The Sentencing Commission considered a proposal to classify *all* existing criminal offenses into a scheme consistent with the recommendations set forth in the Act 61 Criminal Code Reclassification Final Report of July 2015.<sup>4</sup> The Commission subsequently reviewed and

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<sup>4</sup>[http://www.crgvt.org/uploads/5/2/2/2/52222091/act\\_61\\_reclassification\\_of\\_the\\_criminal\\_code\\_final\\_report.pdf](http://www.crgvt.org/uploads/5/2/2/2/52222091/act_61_reclassification_of_the_criminal_code_final_report.pdf)



approved a proposal to automatically classify all existing crimes based on this classification scheme. On March 21, 2019, this proposal was sent to the Chairs of the Senate and House Judiciary Committees as an interim Proposal for Legislation. A copy of the proposal is attached hereto as Attachment A.

In developing the proposal, the Commission worked to ensure that it was generally consistent with the direction provided in Act 148 that no maximum terms be increased. As drafted, the proposal incorporated an effective date of July 1, 2020.

As discussed herein in Section 5, the Commission has also considered proposed amendments to classification of certain categories of existing offenses. In considering the classification of these offenses, the Commission applied the proposed classification scheme. Further details of those results as they relate to changes to sentences of imprisonment are discussed in Section 5. When the Commission applied the proposed classification scheme as to fines, it realized that fines would be increased across the board and sometimes substantially. Concerns were raised about the universal increase in fines that this classification scheme would result in, a stark departure from current penalties without any attendant compelling rationale for such an increase consistent with effective uses of criminal punishment.

**Recommendation:**

The Commission recommends enactment of legislation consistent with its interim proposal on Classification submitted on March 21, 2019 as to the scheme for sentences to imprisonment attached hereto as Attachment A. The Commission will follow-up with a classification scheme as to fines at a later date following further review.

**5. Propose legislation that places each of Vermont’s criminal statutes into one of the classification offense categories it identifies**

In working with the Crime Research Group tableau showing historical data on all criminal statutes charged in Vermont and the distribution of their actual sentences delineated by county, the Sentencing Commission identified four broad categories of offenses—sexual offenses, property offenses, motor vehicle offenses, and crimes against persons. The Commission then reviewed each offense and associated statutory penalty (and actual sentence imposed) within these categories to determine how they should be classified in the proposed classification structure.

The Commission has addressed and voted upon two classification categories, to wit: Sexual Offenses and Property Crimes. The Commission has begun to address, and intends to continue to address, and make future recommendations, as to the classification categories of motor vehicle offenses and crimes against persons.

*(A) Sexual Offenses*

As it pertains to the classification of sexual offenses, the Sentencing Commission voted to recommend the proposed classification structure attached hereto as Attachment B.

*(B) Property Crimes*

As it pertains to the classification of property crimes, the Sentencing Commission recommends on a vote of 8-6 a classification proposal that creates tiers of offenses based on the dollar amount of amount of damage or harm. A copy of this proposal is attached hereto as Attachment C.

This proposal reduces the maximum potential penalty for the vast majority of property offenses compared to the *status quo*, including “de-felonizing” a large number of current property crimes where the harm or damage is below \$10,000. The proposal does, however, include recommended increases in the current penalties for a small number of crimes. The rationale for the increases was to create consistency among penalties for overlapping offenses, such as credit card fraud and false pretenses.

Concerns were raised about the proposed increases and that the stated rationale was not compelling. The view by some Commission members was that a general lack of consideration of “the effective uses of criminal punishment” in developing this proposal resulted in arbitrary proposals to increase penalties, which may have the contrary effect intended by the enabling legislation and actually aggravate the problem.

The Commission voted 8-6 to recommend the property crime classification proposal with the uniform subsequent offense enhancement scheme removed and explicitly note for the Legislature the offenses where the potential sentence increased under the proposal. These increases are identified in the highlighted portions of Attachment C.

The following members voted in the affirmative: Chief Judge Brian Grearson, Judge John Treadwell, Martin LaLonde, Elaine Boyce, John Campbell, David Cahill, Michael Schirling, and David Scherr. The following members voted in the negative: Karen Gennette, Monica Weeber, Matthew Valerio, Marshall Pahl, Rebecca Turner, and Jordana Levine. Judge Thomas Zonay abstained.

**Recommendation:**

The majority of the Commission recommends enactment of legislation consistent with its attached proposals on Classification of sexual offenses and property crimes as appended hereto as Attachment B and Attachment C.

**6. Consideration of whether to propose:**

**(A) rules of statutory interpretation specifically for criminal provisions**

The Commission recommends that the rules of statutory interpretation remain unchanged. The rules of interpretation that apply specifically to penal statutes are well-understood and there is a

substantial body of precedential law that exists. *See, e.g., State v. Brunner*, 2014 VT 62, ¶ 11 (“Under the rule of lenity, we resolve ambiguity in statutory language in favor of the defendant but will not apply the rule if the statute is clear and unambiguous”).

**(B) the consistent use of *mens rea* terminology in all criminal provisions**

The Commission supports the use of consistent *mens rea* terminology in enacting and amending criminal statutes. Thus, where terms have substantially identical meanings such as “intentionally,” “purposely” and “willfully,” the Committee suggests that only one of the terms be used. *See State v. Jackowski*, 2006 VT 119 (discussing the similarity of these terms).

All criminal statute should expressly include the necessary culpable mental state. Newly enacted laws should, thus, include the necessary mental state. Additionally, where the Vermont Supreme Court has interpreted a statute to include an unstated *mens rea*, the statute should be amended to explicitly state that mental state.

**(C) a comprehensive section of definitions applicable to all criminal provisions**

The Commission supports the use of consistent terminology by the Legislature in enacting and amending criminal statutes. Where terms or phrases are defined by statute that there be an explicit reference to the statutory definition. *See, e.g., 13 V.S.A. § 1021(a)(2)* (defining serious bodily injury). The Commission recommends discouraging the use of undefined terms or phrases particularly if those terms are similar to existing defined terms.

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

The Commission is currently reviewing the list of fine-only offenses as developed by CRG with a focus on archaic offenses and offenses that have not been charged within the past ten years. In consultation with interested agencies the Commission intends to develop recommendations to repeal, decriminalize or keep each fine-only offense.

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

The Commission concluded that the concept of attempt is well understood in Vermont law and is distinguishable from the Model Penal Code definition. An amendment is not warranted under the current state of the law in Vermont.

**7. Providing jurisdiction over cases where a person under 18 years of age commits a criminal offense that is not a listed crime under 13 V.S.A. § 5301(7) and is not charged with the offense until after turning 18 years of age**

Under current law, neither the Family Division nor the Criminal Division of the Superior Court maintains jurisdiction over individuals who commit crimes—other than those listed in 13 V.S.A. § 5301 or in 33 V.S.A. § 5402(a)—prior to obtaining eighteen years of age but are not charged until after obtaining eighteen years of age. The Commission reviewed and adopted on a unanimous vote a recommendation to extend the jurisdiction of the Family Division over such individuals until their twentieth birthday so long as charges are filed before their nineteenth birthday and the crime was committed when the offender was at least seventeen years of age. A copy of this recommended proposal is attached hereto as Attachment D.<sup>5</sup>

**Recommendation:**

The Commission recommends enactment of legislation consistent with its attached proposal on amending 33 V.S.A. § 5204a, as appended hereto as Attachment D.

**8. Deferred Sentences**

On February 9, 2019, the Commission sent an interim proposal to the Chairs of the House and Senate Judiciary Committees recommending the elimination of the 28-year old age limit for eligibility to receive a deferred sentence over the objection of a State’s Attorney under 13 V.S.A. § 7041. This recommendation was adopted into law pursuant to Section 18 of Act 77 (2019) and became effective on June 19, 2019.

**Conclusion**

With submission of this report, that Sentencing Commission has fulfilled its current statutory requirements. Section 5 of Act 142 repeals the statute creating the Vermont Sentencing Commission on July 1, 2021. As indicated herein, the Commission intends to continue its efforts to evaluate additional matters including:

- the classification of additional crimes beyond sexual and property crimes;
- the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses;

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<sup>5</sup> It should be noted that this proposal will need to be amended when the jurisdiction of the Family Division is extended to include eighteen- and nineteen-year olds pursuant to Act 201 (2018).

the development of a classification scheme for all fines; and  
the reconciliation of categories of crimes within existing Vermont  
statutes, to include listed crimes and designated crimes.

The Commission anticipates making further recommendations in a supplemental report to the General Assembly regarding these issues on or before November 30, 2020. The Commission will gladly accept any additional requests from the Legislature until the repeal of the Sentencing Commission statutes takes effect.

Sec. 1. 1. Chapter 1 of Title 13 is amended as follows:

Subchapter 1 – Classification of Criminal Offenses

...

§ 1a. Classification of offenses

(a) All felonies shall be classified as follows: Class A, Class B, Class C, Class D, Class E.

(b) All misdemeanors shall be classified as follows: Class A, Class B, Class C, Class D,

Class E.

(c) Except as otherwise provided by law, for all offenses the court may impose a sentence of imprisonment, or a fine, or both.

§ 1b. Sentences of Imprisonment

(a) The maximum term of imprisonment for a felony shall be as follows:

(i) Class A: life imprisonment;

(ii) Class B: imprisonment for 25 years;

(iii) Class C: imprisonment for 10 years;

(iv) Class D: imprisonment for 5 years; and,

(v) Class E: imprisonment for 3 years.

(b) The maximum term of imprisonment for a misdemeanor shall be as follows:

(i) Class A: imprisonment for 2 years;

(ii) Class B: imprisonment for 1 year;

(iii) Class C: imprisonment for 6 months;

(iv) Class D: imprisonment for 30 days;

(v) Class E: no term of imprisonment.

(c) The minimum term of imprisonment for a felony or a misdemeanor shall be as provided by law.

(d) Any statutory or mandatory minimum or maximum term shall be as provided by law.

§ 1c. Fines

(a) Unless otherwise provided by law, the maximum fine for a felony shall be as follows:

(i) Class A: \$1,000,000.00;

(ii) Class B: \$500,000.00;

(iii) Class C: \$100,000.00;

(iv) Class D: \$50,000.00;

(v) Class E: \$25,000.00

(b) Unless otherwise provided by law, the maximum fine for a misdemeanor shall be follows:

(i) Class A: \$10,000.00;

(ii) Class B: \$5,000.00;

(iii) Class C: \$2,500.00;

(iv) Class D: \$1,000.00; and,

(v) Class E: \$500.00.

§ 1d. Transitional Provisions.

(a) Unless otherwise provided by law, criminal offenses shall be classified pursuant to existing statutory maximum penalties. Offenses shall be classified as follows:

(i) Felonies.

(A) All felonies presently punishable by a maximum term of life imprisonment shall be Class A felonies;

(B) All felonies punishable by a maximum term of imprisonment of 25 years or more but less than life shall be Class B felonies;

(C) All felonies punishable by a maximum term of imprisonment of 10 years or more but less than 25 years shall be Class C felonies;

(D) All felonies punishable by a maximum term of imprisonment of 5 years or more but less than 10 years shall be Class D felonies; and,

(E) All felonies punishable by a maximum term of imprisonment of less than 5 years shall be Class E felonies.

(ii) Misdemeanors.

(A) All misdemeanors presently punishable by a maximum term of imprisonment of 2 years shall be Class A misdemeanors;

(B) All misdemeanors punishable by a maximum term of imprisonment of 1 year or more but less than 2 years shall be Class B misdemeanors;

(C) All misdemeanors punishable by a maximum term of imprisonment of 6 months or more but less than 12 months shall be Class C misdemeanors;

(D) All misdemeanors punishable by a maximum term of imprisonment of 30 days or more but less than 6 months shall be Class D misdemeanors; and,

(E) All misdemeanors punishable by a fine and no term of imprisonment or a maximum term of imprisonment of less than 30 days shall be Class E misdemeanors.



(iii) Mandatory minimums. All minimum terms of imprisonment and minimum fines shall remain as provided by law.

(iv) Mandatory maximum terms. Where offenses presently have mandatory maximum terms set by statute, those maximum terms shall remain as provided by law consistent with the maximum term of the Class of the offense.

## Sec. 2. Attempts

13 V.S.A. § 9 is amended as follows

...

(b) If the offense attempted to be committed is a felony other than those set forth in subsection (a) of this section, a person shall be punished by the less severe of the following punishments:

(1) ~~imprisonment for not more than 10 years or fined not more than \$10,000.00, or both~~ as a Class C felony; or

(2) as the offense attempted to be committed is by law punishable.

(c) If the offense attempted to be committed is a misdemeanor, a person shall be imprisoned or fined, or both, ~~in an amount not to exceed one-half the maximum penalty for which~~ as a misdemeanor at the Class one level lower than the offense so attempted to be committed is by law punishable.

Sec. 3. Effective Date. The effective date is July 1, 2020.

**Criminal Offense Classification Proposal – Sex Offenses  
Draft – 2019-07-05**

| Offense   | Statute                         | Penalty               | Automatic Classification | Proposal      | Notes   |
|---|---------------------------------|-----------------------|--------------------------|---------------|---|
| Intermarriage of or fornication by persons prohibited to marry          | 13 VSA § 205                    | 5 years/ \$1000/both  | D felony                 | D felony      |   |
| Cruelty to Animals - sexual conduct with animals – first offense        | 13 VSA §§ 11(A)-(F) & 353(a)(1) | 1 year/\$1000/both    | B misdemeanor            | B misdemeanor |   |
| Cruelty to Animals - sexual conduct with animals – second or subsequent | 13 VSA §§ 11(A)-(F) & 353(a)(1) | 2 years/\$5000/both   | A misdemeanor            | A misdemeanor |   |
| Cruelty to a child – subjected to sexual conduct                        | 13 VSA § 1304(a)&(b)            | 10 years/\$20000/both | C felony                 | C felony      |   |
| Sexual abuse of a vulnerable adult – sexual activity                    | 13 VSA § 1379(a)                | 2 years/\$10000/both  | A misdemeanor            | A misdemeanor |   |
| Sexual abuse of a vulnerable adult – nonconsensual lewd conduct         | 13 VSA § 1379(b)&(c)(1)         | 5 years/\$10000/both  | D felony                 | C felony      | Status of victim is appropriate grounds for enhanced penalty - see 13 VSA § 2602  |
| Sexual abuse of a vulnerable adult – nonconsensual sexual act           | 13 VSA § 1379(b)&(c)(2)         | 20 years/\$10000/both | C felony                 | A felony      | Nonconsensual acts punished as life felonies<br>The statute was enacted in 2005.<br>The indeterminate life sentencing statute for sex |

**Criminal Offense Classification Proposal – Sex Offenses  
Draft – 2019-07-05**

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|---|----------------------------|---|---------------|---------------|--|
|   |                            |   |               |               | offenses was enacted in 2006. 13 V.S.A. § 3271.                    |
| Sexual abuse of a vulnerable adult – caregiver nonconsensual lewd conduct | 13 VSA § 1379(b)&(d)(1)    | 7 years/\$10000/both  | D felony      | C felony      | Elements include aggravating factors – consider mandatory minimum? |
| Sexual abuse of a vulnerable adult – caregiver nonconsensual sexual act   | 13 VSA § 1379(b)&(d)(2)    | 25 years/\$10000/both   | B felony      | A felony      | Nonconsensual sexual acts punished as life felonies                |
| Lewd and lascivious conduct   | 13 VSA § 2601              | 5 years/\$300/both  | D felony      | D felony      |  |
| Prohibited conduct – first offense  | 13 VSA § 2601a(a)&(b)(1)   | 1 year/\$300/both   | B misdemeanor | B misdemeanor |  |
| Prohibited conduct – second or subsequent                                 | 13 VSA § 2601a(a)&(b)(2)   | 2 years/\$1000/both   | A misdemeanor | A misdemeanor | This is a recent enactment - but see 13 VSA 2632                   |
| Lewd or lascivious conduct with a child – first offense                   | 13 VSA § 2602(a)(1)&(b)(1) | 15 years/\$5000/both<br>soft 2 year minimum                         | C felony      | C felony      |  |
| Lewd or lascivious conduct with a child – second offense                  | 13 VSA § 2602(a)(1)&(b)(2) | Life. \$25000<br>hard 5 year minimum<br>with downward<br>departure  | A felony      | A felony      |  |
| Lewd or lascivious conduct with a child – third or subsequent             | 13 VSA § 2602(a)(1)&(b)(3) | Life. \$25000<br>hard 10 year minimum<br>with downward<br>departure | A felony      | A felony      |  |

**Criminal Offense Classification Proposal – Sex Offenses  
Draft – 2019-07-05**

|   |                                   |   |               |               |                  |
|---|-----------------------------------|---|---------------|---------------|------------------|
| Voyeurism – first offense   | 13 VSA § 2605(b)(d)(e)&(j)        | 2 years/\$1000/both                                 | A misdemeanor | A misdemeanor |                  |
| Voyeurism – second or subsequent                                    | 13 VSA § 2605(b)(d)(e)&(j)        | 3 years/\$5000/both                                 | E felony      | E felony      |                  |
| Voyeurism – disclose to 3 <sup>rd</sup> party                       | 13 VSA § 2605(c)&(j)              | 5 years/\$5000/both                                 | D felony      | D felony      |                  |
| Disclosure of sexually explicit images without consent              | 13 VSA § 2606(b)(1)               | 2 years/\$2000/both                                 | A misdemeanor | A misdemeanor |                  |
| Disclosure of sexually explicit images without consent – for profit | 13 VSA § 2606(b)(1)&(2)           | 5 years/\$10000/both                                | D felony      | D felony      |                  |
| Prostitution – first offense  | 13 VSA § 2632                     | 1 year/\$100/both                                   | B misdemeanor | B misdemeanor |                  |
| Prostitution – second or subsequent                                 | 13 VSA § 2632                     | 3 years   | E felony      | A misdemeanor | See 13 VSA 2601a |
| Slave traffic   | 13 VSA § 2635                     | 10 years/\$2000/both soft 2 year/\$200/both minimum | C felony      | C felony      |                  |
| Unlawful procurement  | 13 VSA § 2636                     | 10 years/\$2000/both soft 2 year/\$200/both minimum | C felony      | C felony      |                  |
| Appropriating or levying upon earnings of prostitute                | 13 VSA § 2637                     | 10 years/\$2000/both soft 2 year/\$200/both minimum | C felony      | C felony      |                  |
| Human trafficking – commercial sex act                              | 13 VSA § 2652(a)(1)(2)(3)(4) &(b) | Life/\$500000/both                                  | A felony      | A felony      |                  |
| Aggravated human trafficking  | 13 VSA § 2653                     | Life/\$100000/both soft 20 year minimum             | A felony      | A felony      |                  |

**Criminal Offense Classification Proposal – Sex Offenses  
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|  |                          |                       |               |               |  |
|--|--------------------------|-----------------------|---------------|---------------|--|
| Patronizing or facilitating human trafficking  | 13 VSA § 2654            | 5 years/\$100000/both | D felony      | D felony      |  |
| Solicitation – commercial sex act  | 13 VSA § 2655            | 5 years/\$100000/both | D felony      | D felony      |  |
| Disseminating indecent material to a minor in the presence of the minor  | 13 VSA § 2802 & 2807     | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Disseminating indecent material to a minor outside the presence of the minor   | 13 VSA § 2802a & 2807    | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Minor electronically disseminating indecent material to another person – adult in possession of disseminated materials | 13 VSA § 2802b(a)(2)&(c) | 6 months/\$300/both   | C misdemeanor | C misdemeanor |  |
| Distribution of indecent material  | 13 VSA § 2803 & 2807     | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Exhibition of motion pictures  | 13 VSA § 2804 & 2807     | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Publicly displaying sex or nudity for advertising purposes   | 13 VSA § 2804a & 2807    | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Displaying obscene materials to minors   | 13 VSA § 2804b & 2807    | 1 year/\$1000/both    | B misdemeanor | B misdemeanor |  |
| Use of a child in a sexual performance – first offense   | 13 VSA § 2822 & 2825(a)  | 10 years/\$20000/both | C felony      | C felony      |  |

**Criminal Offense Classification Proposal – Sex Offenses  
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|   |                            |  |               |               |  |
|---|----------------------------|--|---------------|---------------|--|
| Use of a child in a sexual performance – second or subsequent     | 13 VSA § 2822 & 2825(b)    | 15 years/\$50000/both<br>Soft 1 year minimum | C felony      | C felony      | Soft mandatory minimum for subsequent offense. Alternatives could be a hard minimum or repeal. |
| Consenting to a sexual performance – first offense                | 13 VSA § 2823 & 2825(a)    | 10 years/\$20000/both                        | C felony      | C felony      |  |
| Consenting to a sexual performance – second or subsequent         | 13 VSA § 2823 & 2825(b)    | 15 years/\$50000/both<br>Soft 1 year minimum | C felony      | C felony      | Soft mandatory minimum for subsequent offense. Alternatives could be a hard minimum or repeal. |
| Promoting a recording of sexual conduct – first offense           | 13 VSA § 2824 & 2825(a)    | 10 years/\$20000/both                        | C felony      | C felony      |  |
| Promoting a recording of sexual conduct – second or subsequent    | 13 VSA § 2824 & 2825(b)    | 15 years/\$50000/both<br>Soft 1 year minimum | C felony      | C felony      | Soft mandatory minimum for subsequent offense. Alternatives could be a hard minimum or repeal. |
| Possession of child pornography – lewd exhibition – first offense | 13 VSA § 2827 & 2825(c)(1) | 2 years/\$5000/both                          | A misdemeanor | A misdemeanor |  |
| Possession of child pornography – sexual conduct – first offense  | 13 VSA § 2827 & 2825(c)(2) | 5 years/\$10000/both                         | D felony      | D felony      |  |

**Criminal Offense Classification Proposal – Sex Offenses  
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|   |                            |  |               |               |   |
|---|----------------------------|--|---------------|---------------|---|
| Possession of child pornography – second or subsequent                      | 13 VSA § 2827 & 2825(d)    | 10 years/\$50000/both  | C felony      | C felony      |   |
| Luring a child  | 13 VSA § 2828 & 2825(e)    | 5 years/\$10000/both   | D felony      | D felony      |   |
| Sexual assault  | 13 VSA § 3252(a)(b)(d)&(e) | Life. \$25000<br>soft 3 year minimum                                     | A felony      | A felony      |   |
| Sexual assault – minor victim   | 13 VSA § 3252(c)           | 20 years. \$10000  | C felony      | B felony      | B felony is closer to the existing statutory penalty but note L&L w/ child now a C felony |
| Aggravated sexual assault   | 13 VSA § 3253              | Life. \$50000<br>hard 10 year minimum with downward departure to 5 years | A felony      | A felony      |   |
| Aggravated sexual assault of a child  | 13 VSA § 3253a             | Life. \$50000<br>hard 25 year minimum                                    | A felony      | A felony      |   |
| Sexual exploitation of an inmate  | 13 VSA § 3257              | 5 years/\$10000/both   | D felony      | D felony      |   |
| Sexual exploitation of a minor  | 13 VSA § 3258(a)&(b)       | 1 year/\$2000/both   | B misdemeanor | B misdemeanor |   |
| Sexual exploitation of a minor – abuse of authority                         | 13 VSA § 3258(a)&(c)       | 5 years/\$10000/both   | D felony      | D felony      |   |
| Sexual exploitation of a person in the custody of a law enforcement officer | 13 V.S.A. § 3259           | 5 years/\$10000/both   | D felony      | D felony      |   |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
Draft 08-29-2019**

**Proposed Tiered Classification System for Property Crimes  
*Felony Threshold is “Greater Than \$10,000.”***

| <u>Value* at Issue:</u> | <u>Classification Is:</u> |
|-------------------------|---------------------------|
| Greater than \$0        | D misdemeanor (30 days)   |
| \$1,000-\$9,999         | A Misdemeanor (2 years)   |
| \$10,000-\$99,999       | D Felony (5 years)        |
| \$100,000 +             | C Felony (10 years)       |
| Subsequent Offense      | No recommendation         |

**Intended Effect of Proposal “B” Tier Classification System:** (1) create a uniform system of penalties based upon the dollar value of the item stolen or damage done; (2) de-felonize the range from \$900-\$9,999; (3) cap exposure at a C Felony, which is reserved for the \$100,000+ tier or a subsequent offense of the \$10,000-\$99,999 tier; and (4) achieve reforms consistent with or more progressive than other states’ recent efforts to reform of dollar cut-off values. See *Appendix*, p. 9.

\*It might make sense to clarify in instances of property damage that “value” is the cost of restoring property to its previous condition, not the value of the property itself. For example, Defendant takes a key to his estranged girlfriend’s Ford Mustang, gouging the paint on three body panels. The depreciated actual cash value of the Mustang is \$15,000. The cost to repair the body panels to their previous condition is \$1,200. The “value” for purposes of the above table is therefore \$1,200. The value of the Mustang (\$15,000) is immaterial. The offense is chargeable as an A Misdemeanor, not as a D Felony.

**Periodic Inflation Adjustment Recommendation:** On July 1, 2045 and thereafter every 25 years, the Joint Fiscal Office (JFO) shall calculate the inflation or deflation rate for the preceding 25 years using a generally-accepted measure of consumer price inflation or deflation. Based upon that calculation, the JFO shall issue a report recommending to the General Assembly the adjustment of the dollar-value-denominated penalty tiers for property crimes, rounding to the nearest \$100.

**Classification Recommendations:** not all property crimes are well-suited to dollar-value tiers. For instance, crimes against a person such as *Larceny From a Person* are not tiered. The classification recommendations follow:



**Criminal Offense Classification Proposal "B" – Property Crimes & Frauds  
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| Offense   | Statute              | Penalty              | Automatic Classification | Proposal               | Notes  |
|---|----------------------|----------------------|--------------------------|------------------------|--|
| Credit Card Fraud \$50 or Less  | 9 VSA 4043 & 4044(a) | 6 mo/ \$500/both     | C misdemeanor            | Follow tiered proposal | <b>Less time</b>   |
| <b>Credit Card Fraud \$50 or More</b>                                 | 9 VSA 4043 & 4044(b) | 1 yr/ \$1000/both    | B misdemeanor            | Follow tiered proposal | <b>More time</b>   |
| Forgery   | 13 VSA 1801          | 10 yr /\$1000/both   | C felony                 | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K      |
| Uttering Forgery  | 13 VSA 1802          | 10 yr /\$1000/both   | C felony                 | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K      |
| Counterfeiting  | 13 VSA 1804          | 14 yr/\$1000/both    | C felony                 | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K      |
| Credit Card Skimmer   | 13 VSA 1816          | 10 yr/\$10000/both   | C felony                 | C felony               | The crime itself is suggestive of non-petty dollar amounts |
| False Personation   | 13 VSA 2001          | 10 years/\$2000/both | C felony                 | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K      |
| False Pretenses \$900 or Less   | 13 VSA 2002          | 1 yr / \$1000/both   | B misdemeanor            | Follow tiered proposal | <b>less time</b>   |
| False Pretenses \$900 or More   | 13 VSA 2002          | 10 yr / \$2000/both  | C felony                 | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K      |
| Home Improvement Fraud, Less than \$1000                              | 13 VSA 2029          | 2 years/\$1000/both  | A misdemeanor            | Follow tiered proposal | <b>less time</b>   |
| Home Improvement Fraud, Less than \$1000, 2 <sup>nd</sup> Offense     | 13 VSA 2029          | 3 years/\$5000/both  | E felony                 | Follow tiered proposal | <b>less time</b>   |
| <b>Home Improvement Fraud, More than \$1000 (or \$2500 aggregate)</b> | 13 VSA 2029          | 3 years/\$5000/both  | E felony                 | Follow tiered proposal | <b>less time up to 10K</b><br><b>more time over 10K</b>    |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
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|   |                      |                        |               |                        |  |
|---|----------------------|------------------------|---------------|------------------------|--|
| Home Improvement Fraud, More than \$1000 (or \$2500 aggregate), 2 <sup>nd</sup> Offense | 13 VSA 2029          | 5 years/\$10000/both   | D felony      | Follow tiered proposal | same time up to 10K, more time over  |
| Home Improvement Fraud – Registry Violations  | 13 VSA 2029(c) & (e) | 2 years/\$1000/both    | A misdemeanor |                        | This is a status offense not subject to dollar amount tiers.   |
| ID Theft- 1 <sup>st</sup> offense   | 13 VSA 2030          | 3 years/\$5000/both    | E felony      | E felony               | Some variants of this offense are not susceptible to tiering   |
| ID Theft – 2 <sup>nd</sup> offense  | 13 VSA 2030          | 10 years/\$1000/both   | C felony      | C felony               |  |
| Insurance Fraud, Less than \$900  | 13 VSA 2031          | 6 months /\$5000       | C misdemeanor | Follow tiered proposal | Less time  |
| Insurance Fraud, More than \$900  | 13 VSA 2031          | 5 years / \$10000      | D felony      | Follow tiered proposal | Less time under 10K, same time 10K, more time over 100K  |
| Insurance Fraud, 2 <sup>nd</sup> Offense, any amount                                    | 13 VSA 2031          | 5 years / \$20000      | D felony      | Follow tiered proposal | less time under 10K, Same time 10K, more time over 10K   |
| Petit Larceny, \$900 or Less  | 13 VSA 2602          | 1 year / \$1000 fine   | B misdemeanor | Follow tiered proposal | less time  |
| Grand Larceny, More than \$900  | 13 VSA 2601          | 10 years / \$5000 fine | C felony      | Follow tiered proposal | less time under 100K, same time 100K   |
| Larceny From Person   | 13 VSA 2503          | 10 years / \$500       | C felony      | C felony               | This is often the go-to for robberies of retail/banking businesses. Because of the element of violence or intimidation, it might make sense to leave |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
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|   |             |                        |               |                        |  |
|---|-------------|------------------------|---------------|------------------------|--|
|   |             |                        |               |                        | this one alone or adopt a modified tiered system enhanced by 2 classes (subject to Fel Class B cap). |
| Embezzlement \$100 or Less                            | 13 VSA 2531 | 1 yr / \$1000/ both    | B misdemeanor | Follow tiered proposal | <b>less time</b>   |
| Embezzlement More than \$100                          | 13 VSA 2531 | 10 years/\$10000/both  | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Embezzlement – Bank Officer                           | 13 VSA 2532 | 10 years/\$1000/both   | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Embezzlement - Trustee                                | 13 VSA 2533 | 10 years/\$1000/both   | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Embezzlement -Official Capacity                       | 13 VSA 2537 | 10 years/\$1000/both   | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Stolen Property- Buy/Receive/Possess, \$900 or Less   | 13 VSA 2561 | 1 year / \$1000 fine   | B misdemeanor | Follow tiered proposal | <b>Less time</b>   |
| Stolen Property- Buy/Receive/Possess, More than \$900 | 13 VSA 2561 | 10 years / \$5000 fine | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Retail Theft, \$900 or Less                           | 13 VSA 2577 | 6 months / \$500 /both | C misdemeanor | Follow tiered proposal | <b>Less time</b>   |
| Retail Theft, More Than \$900                         | 13 VSA 2577 | 10 years / \$1000/both | C felony      | Follow tiered proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K  |
| Retail Theft, Alter UPC label                         | 13 VSA 2577 | 2 years / \$1000/both  | A misdemeanor | A misdemeanor          |  |
| Retail Theft, 15 or More Altered UPC labels           | 13 VSA 2577 | 10 years/\$10,000/both | C felony      | C felony               |  |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
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|   |                |                        |                  |                           |   |
|---|----------------|------------------------|------------------|---------------------------|---|
| Retail Theft –<br>Manufacture/Sell/Possess<br>tools or devices to shield<br>merchandise | 13 VSA 2577    | 10 years/\$10,000/both | C<br>felony      | C<br>felony               |   |
| Theft of Services, \$900 or<br>Less   | 13 VSA 2582    | 1 year/\$1,000/both    | B<br>misdemeanor | Follow tiered<br>proposal | <b>less time</b>  |
| Theft of Services, More<br>than \$900   | 13 VSA 2582    | 10 years/\$5,000/both  | C felony         | Follow tiered<br>proposal | <b>less time</b> under 100K,<br><b>same time</b> 100K   |
| Theft of Rented Property,<br>\$900 or Less  | 13 VSA 2591    | 6 months/\$500/both    | C<br>misdemeanor | Follow tiered<br>proposal | <b>less time</b>  |
| <b>Theft of Rented Property,<br/>More than \$900</b>                                    | 13 VSA 2591    | 2 years/\$1000/both    | A<br>misdemeanor | Follow tiered<br>proposal | <b>Less time</b> under 1K,<br><b>same time</b> 1K- 10K,<br><b>more time over 10K</b>                |
| <b>Theft of Rented Property,<br/>More than \$900, 2<sup>nd</sup><br/>Offense</b>        | 13 VSA 2591    | 5 years/\$5000/both    | D<br>felony      | Follow tiered<br>proposal | <b>more time 2<sup>ND</sup><br/>offense over 10K</b>  |
| Failure to Return<br>Rented/Leased Vehicle  | 13 VSA 2592    | 3 years/\$3000/both    | E felony         | E felony                  | Makes sense given<br>that rental/leased<br>cars are worth a 5-<br>digit number. No<br>need to tier. |
| Failure to Return<br>Rented/Leased Vehicle,<br>2 <sup>nd</sup> Offense                  | 13 VSA 2592    | 5 years/\$5000/both    | D felony         | D felony                  |   |
| False Claim, Less than<br>\$500   | 13 VSA 3016    | 2 years/\$5000/both    | A<br>misdemeanor | Follow tiered<br>proposal | <b>less time</b>  |
| <b>False Claim, \$500 or More</b>   | 13 VSA 3016    | 5 years/\$10000/both   | D felony         | Follow tiered<br>proposal | <b>less time</b> under 10K,<br><b>same time</b> 10K, <b>more<br/>time 100K</b>                      |
| <b>Unlawful Mischief, More<br/>than \$1000</b>  | 13 VSA 3701(a) | 5yrs/\$5000/both       | D felony         | Follow tiered<br>proposal | <b>less time</b> under 10K,<br><b>same time</b> 10K-  |

**Criminal Offense Classification Proposal "B" – Property Crimes & Frauds  
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|   |                |  |               |                         |  |
|---|----------------|--|---------------|-------------------------|--|
|   |                |  |               |                         | 100K, <b>more time</b><br>100K+                        |
| Unlawful Mischief, More than \$250      | 13 VSA 3701(b) | 1yr/\$1000/both  | B misdemeanor | Follow tiered proposal  | <b>less time</b> under 1K                              |
| Unlawful Mischief                       | 13 VSA 3701(c) | 6 mo/\$500/both  | C misdemeanor | Follow tiered proposal  | <b>less time</b>                                       |
| Unlawful Mischief w / Explosive         | 13 VSA 3701(d) | 5 yr / \$5000/both   | D felony      | D felony                |  |
| Timber Trespass-1 <sup>st</sup> offense | 13 VSA 3606a   | 1 yr/\$20000/both  | B misdemeanor | B misdemeanor           |  |
| Timber Trespass-2nd offense             | 13 VSA 3606a   | 2 yrs/\$50000/both   | A misdemeanor | A misdemeanor           |  |
| Unlawful Trespass-Land                  | 13 VSA 3705(a) | 3mo/\$500/both   | D misdemeanor | D misdemeanor           |  |
| Unlawful Trespass-Building              | 13 VSA 3705(c) | 1 yr/\$500/both  | B misdemeanor | B misdemeanor           |  |
| Unlawful Trespass-Dwelling              | 13 VSA 3705(d) | 3 yrs /\$2000/both   | E felony      | E felony                |  |
| Unauthorized Book Removal from Library  | 13 VSA 3732    | NMT \$50 (half to library, half to cover prosecution costs!) | E misdemeanor | E misdemeanor           | Does this really need to be its own crime?             |
| Opening a Dam                           | 13 VSA 3733    | 5 years /\$500/both  | D felony      | Follow tiered proposal? | Shouldn't it matter how much damage one causes?        |
| Motor Vehicle Trespass                  | 13 VSA 3738    | NMT \$500  | E misdemeanor | E misdemeanor           | General comment: E misdemeanors seem rather pointless. |
| Operate Vehicle on State-Owned Land     | 13 VSA 3739    | NMT \$500  | E misdemeanor | E misdemeanor           | General comment: E misdemeanors seem rather pointless. |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
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|  |             |                     |               |                         |   |
|--|-------------|---------------------|---------------|-------------------------|---|
| Operate Vehicle on State-Owned Land, Damage    | 13 VSA 3740 | NMT \$500           | E misdemeanor | Follow tiered proposal? |   |
| Unauthorized Removal of Human Remains          | 13 VSA 3761 | 15 yrs/\$10000/both | C felony      | C felony                |   |
| Grave Markers – Stealing, Removing, Etc        | 13 VSA 3767 | 5 yrs /\$5000/both  | D felony      | D felony                | Didn't seem right for tiered valuation due to sentimental value |
| Grave Flowers/Plants – Stealing, Removing, Etc | 13 VSA 3767 | 1 yr/\$500/both     | B misdemeanor | B misdemeanor           | Didn't seem right for tiered valuation due to sentimental value |
| Disturb a Funeral                              | 13 VSA 3771 | 30 days/\$500/both  | D misdemeanor | D misdemeanor           |   |
| Tapping Gas Pipeline-Fraud                     | 13 VSA 3781 | 1 yr/\$1000/both    | A misdemeanor | A misdemeanor           | Hard to measure volume (value) of gas                           |
| Tapping Elec Lines                             | 13 VSA 3782 | 2 yr/\$300/both     | A misdemeanor | A misdemeanor           | Hard to measure Kwh (value) of electricity                      |
| Interfere w/ Util Meter                        | 13 VSA 3784 | 3 mo/\$100/both     | D misdemeanor | D misdemeanor           |   |
| Injuring Lights                                | 13 VSA 3785 | 3 mo/\$50/both      | D misdemeanor | D misdemeanor           |   |
| Tapping Cable TV                               | 13 VSA 3786 | NMT \$100           | E misdemeanor | E misdemeanor           | General comment: E misdemeanors seem rather pointless.          |
| Unfenced Holes in Ice                          | 13 VSA 3831 | NMT \$50            | E misdemeanor | E misdemeanor           | General comment: E misdemeanors seem rather pointless.          |
| Removing Survey Marker                         | 13 VSA 3834 | NMT \$100           | E misdemeanor | E misdemeanor           | General comment: E misdemeanors seem rather pointless.          |
| Computer Fraud \$500 or Less                   | 13 VSA 4103 | 1 yr/\$500/both     | B misdemeanor | Follow tiered proposal  | <b>less time</b>  |

**Criminal Offense Classification Proposal “B” – Property Crimes & Frauds  
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|  |             |                      |               |                        |   |
|--|-------------|----------------------|---------------|------------------------|---|
| Computer Fraud \$500 or Less, 2 <sup>nd</sup> Offense                      | 13 VSA 4103 | 2yrs/\$1,000/both    | A misdemeanor | Follow tiered proposal | <b>same time</b>  |
| Computer Fraud, More than \$500  | 13 VSA 4103 | 10 yrs/\$10,000/both | C felony      | Follow tiered proposal | <b>less time</b> under 100K<br><b>same time</b> over 100K |
| Alter/Damage Computer Network, \$500 or Less                               | 13 VSA 4104 | 1yr/\$5000/both      | B misdemeanor | Follow tiered proposal | <b>less time</b>  |
| Alter/Damage Computer Network, \$500 or Less, 2 <sup>nd</sup> Offense      | 13 VSA 4104 | 2yrs/\$10,000/both   | A misdemeanor | Follow tiered proposal | <b>same time</b>  |
| Alter/Damage Computer Network, More than \$500                             | 13 VSA 4104 | 10yrs/\$25,000/both  | C felony      | Follow tiered proposal | <b>less time</b> under 100K<br><b>same time</b> over 100K |
| Unauthorized Access Computer Network                                       | 13 VSA 4102 | 6mo/\$500/both       | C misdemeanor | C misdemeanor          |   |
| Theft/Destruction Computer Network, \$500 or Less                          | 13 VSA 4105 | 1yr/\$5000/both      | B misdemeanor | Follow tiered proposal |   |
| Theft/Destruction Computer Network, \$500 or Less, 2 <sup>nd</sup> Offense | 13 VSA 4105 | 2yrs/\$10,000/both   | A misdemeanor | Follow tiered proposal | <b>same time</b>  |
| Theft/Destruction Network, More than \$500                                 | 13 VSA 4105 | 10yrs/\$25,000/both  | C felony      | Follow tiered proposal | <b>less time</b> under 10K,<br><b>same time</b> over 10K  |

Note:

- Arson is a hybrid crime, impacting property, safety, and public order. I did not include it above but can do so if desired.
- Let’s discuss fraud in commercial transactions (T13 Ch 49). Are commercial transaction still done this way? Part of UCC?

# Criminal Offense Classification Proposal “B” – Property Crimes & Frauds

## Draft 08-29-2019

### APPENDIX

- In 2010, South Carolina revised its dollar-value cutoffs to the following. No increase in property crime was observed.
  - Value < \$2,000 : 30 day maximum penalty
  - Value \$2,000 - \$10,000: 5 year maximum penalty
  - Value > \$10,000: 10 year maximum penalty
  
- What follows is a 50-state survey of felony cutoffs assembled by the Pew Charitable Trusts in 2017. Please note that for purposes of the survey, “felony” means more than *one* year in prison. **Thus, in summary, the chart represents in Vermont crime classification-speak, the dividing line between Class A and Class B misdemeanors.**

Figure 1  
**At Least 37 States Have Raised Felony Theft Thresholds Since 2000**  
 Higher sums are designed to take inflation into account

| Year of change | State          | Previous threshold | Enacted threshold | Legislation |
|----------------|----------------|--------------------|-------------------|-------------|
| 2001           | Oklahoma       | \$50               | \$500             | S.B. 397    |
| 2002           | Missouri       | \$150              | \$500             | H.B. 1888   |
| 2003           | Alabama        | \$250              | \$500             | H.B. 491    |
|                | Mississippi    | \$250              | \$500             | H.B. 1121   |
| 2004           | Kansas         | \$500              | \$1,000           | H.B. 2271   |
|                | Wyoming        | \$500              | \$1,000           | S.F. 66     |
| 2005           | South Dakota   | \$500              | \$1,000           | S.B. 43     |
| 2006           | Arizona        | \$250              | \$1,000           | H.B. 2581   |
|                | New Mexico     | \$250              | \$500             | H.B. 80     |
|                | Vermont        | \$500              | \$900             | S.B. 285    |
| 2007           | Colorado       | \$500              | \$1,000           | S.B. 260    |
|                | Minnesota      | \$500              | \$1,000           | H.F. 829    |
| 2009           | Connecticut    | \$1,000            | \$2,000           | H.B. 6576   |
|                | Delaware       | \$1,000            | \$1,500           | H.B. 113    |
|                | Kentucky       | \$300              | \$500             | H.B. 369    |
|                | Louisiana      | \$300              | \$500             | H.B. 555    |
|                | Maryland       | \$500              | \$1,000           | H.B. 66     |
|                | Montana        | \$1,000            | \$1,500           | S.B. 476    |
|                | Oregon         | \$750              | \$1,000           | H.B. 2023   |
|                | Washington     | \$250              | \$750             | S.B. 6167   |
| 2010           | California     | \$400              | \$950             | A.B. 2372   |
|                | Illinois       | \$300              | \$500             | S.B. 3797   |
|                | New Hampshire  | \$500              | \$1,000           | S.B. 205    |
|                | South Carolina | \$1,000            | \$2,000           | S.B. 1154   |
|                | Utah           | \$1,000            | \$1,500           | S.B. 10     |
| 2011           | Arkansas       | \$500              | \$1,000           | S.B. 570    |
|                | Nevada         | \$250              | \$650             | A.B. 142    |
|                | Ohio           | \$500              | \$1,000           | H.B. 86     |
| 2012           | Georgia        | \$500              | \$1,500           | H.B. 1176   |
|                | Rhode Island   | \$500              | \$1,500           | H.B. 776A   |
| 2013           | Colorado       | \$1,000            | \$2,000           | H.B. 1160   |
|                | Indiana        | any amount         | \$750             | H.B. 1006   |
|                | North Dakota   | \$500              | \$1,000           | S.B. 2251   |
| 2014           | Alaska         | \$500              | \$750             | S.B. 64     |
|                | Louisiana      | \$500              | \$750             | H.B. 791    |
|                | Mississippi    | \$500              | \$1,000           | H.B. 585    |
|                | Missouri       | \$500              | \$750             | S.B. 491    |
| 2015           | Alabama        | \$500              | \$1,500           | S.B. 67     |
|                | Nebraska       | \$500              | \$1,500           | L.B. 605    |
|                | Texas          | \$1,500            | \$2,500           | H.B. 1396   |
| 2016           | Alaska         | \$750              | \$1,000           | S.B. 91     |
|                | Hawaii         | \$300              | \$750             | H.B. 2561   |
|                | Kansas         | \$1,000            | \$1,500           | H.B. 2462   |
|                | Maryland       | \$1,000            | \$1,500           | S.B. 1005   |
|                | Oklahoma       | \$500              | \$1,000           | H.B. 2751   |
|                | Tennessee      | \$500              | \$1,000           | H.B. 2576   |

Note: The District of Columbia raised its felony theft threshold in 2010 but is not included in this report because its crime data are not directly comparable with state crime statistics.

Source: Pew's analysis of legislative information from the National Conference of State Legislatures  
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ATTACHMENT D

§ 5204a. Jurisdiction over adult defendant for crime committed when defendant was under age 18

(a) A proceeding may be commenced in the Family Division against a defendant who has attained 18 years of age if:

(1) the petition alleges that the defendant;

(A) before attaining 18 years of age, violated a crime listed in subsection 5204(a) of this title; or

(B) after attaining 14 years of age but before attaining 18 years of age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title;

(C) after attaining 17 years of age but before attaining 18 years of age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title as long as the petition is filed prior to the defendant's 19<sup>th</sup> birthday;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) If a petition has been filed pursuant to subdivision (a)(1)(A) of this section, the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of chapter 52A of this title if the defendant is under 23 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(B) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 22nd birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 14 years of age but before attaining 18 years of age, the defendant committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(4) In making the determination required by subdivision (1)(D) of this subsection, the court may consider, among other matters:

(A) the maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(B) the extent and nature of the defendant's prior criminal record and record of delinquency;

(C) the nature of past treatment efforts and the nature of the defendant's response to them;

(D) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(E) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(F) whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) (3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(C) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 20th birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 17 years of age but before attaining 18 years of age, the defendant committed an offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

~~(e)~~(d) If the Family Division does not transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.