

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 261
3 entitled “An act relating to eliminating life without parole” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

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

8 § 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

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

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

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

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

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

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

19 (3) Notwithstanding any other provision of law, this subsection shall
20 apply only if the murder was committed on or after ~~the effective date of this act~~
21 May 1, 2006.

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

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

17 * * *

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

20 (1) the defendant was not sentenced before the effective date of this act;
21 or

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

4 Sec. 2. 13 V.S.A. § 2311 is amended to read:

5 § 2311. AGGRAVATED MURDER DEFINED

6 (a) A person is guilty of aggravated murder if he or she commits a first or
7 second degree murder, as defined in section 2301 of this title, and at the time
8 of his or her actions, one or more of the following circumstances was in fact
9 present:

10 (1) The murder was committed while the defendant was in custody
11 under sentence for murder or aggravated murder.

12 (2) The defendant had, prior to commencement of the trial for
13 aggravated murder, been convicted of another aggravated murder or murder in
14 any jurisdiction in the United States and territories.

15 (3) At the time of the murder, the defendant also committed another
16 murder.

17 (4) At the time of the murder, the defendant knowingly created a great
18 risk of death to another person or persons.

19 (5) The murder was committed for the purpose of avoiding or
20 preventing lawful arrest by a law enforcement officer of any person, or

1 effecting an escape by any person from lawful custody of a law enforcement
2 officer.

3 (6) The murder was committed by a person hired for such purpose in
4 return for anything of value. Both the person hired and the person hiring him
5 or her are guilty of aggravated murder.

6 (7) The victim of the murder was known by the person to be a
7 firefighter, a member of emergency medical personnel as defined in 24 V.S.A.
8 § 2651(6), a person employed in any capacity in or about a correctional
9 facility, or a law enforcement officer, and was performing his or her official
10 duties.

11 (8) The murder was committed in perpetrating or attempting to
12 perpetrate sexual assault or aggravated sexual assault.

13 (b) In a prosecution for aggravated murder, the State shall allege and prove
14 beyond a reasonable doubt one or more of the circumstances enumerated in
15 subsection (a) of this section.

16 (c) The punishment for aggravated murder shall be imprisonment for life
17 and for no lesser term. The court shall not place on probation or suspend or
18 defer the sentence of any person convicted of aggravated murder. A person
19 sentenced under this section ~~shall not be eligible for parole during the term of~~
20 ~~imprisonment imposed herein and~~ shall not be eligible for work-release or

1 noncustodial furlough except when serious medical services make custodial
2 furlough inappropriate.

3 Sec. 3. 13 V.S.A. § 7032 is amended to read:

4 § 7032. CONSECUTIVE SENTENCES

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

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

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

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

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

9 (2) When terms run consecutively, the minimum terms are added to
10 arrive at an aggregate minimum to be served equal to the sum of all minimum
11 terms and the maximum terms are added to arrive at an aggregate maximum
12 equal to the sum of all maximum terms. A person shall serve no more time on
13 consecutive minimum sentences than the sum of the minimum terms,
14 regardless of whether the sentences are imposed on the same or different dates.

15 If a person has served a minimum term and subsequently incurs another
16 criminal charge, the time the person spends in custody awaiting disposition of
17 the new charge shall count toward the minimum term of the new sentence, if
18 one is imposed. This subdivision shall not require the Department of
19 Corrections to release a person from incarceration to community supervision at
20 the person's minimum term.

1 (d) When multiple sentences are imposed pursuant to subsection (a) on an
2 individual who was 25 years of age or younger at the time of the commission
3 of the offenses, the sentences shall run concurrently.

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

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

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

10 Sec. 5. 28 V.S.A. § 1 is amended to read:

11 § 1. PURPOSES

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

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

1 Department shall develop and implement a comprehensive program that will
2 provide necessary closed custodial confinement of frequent, dangerous
3 offenders, but that also will establish as its primary objective the disciplined
4 preparation of offenders for their responsible roles in the open community.
5 The Department shall ensure that the comprehensive program required by this
6 subsection includes a process by which each offender sentenced to any term of
7 imprisonment ~~other than for life without parole~~, within 30 days after receiving
8 his or her sentence, shall begin to develop and implement a plan preparing for
9 return to the community.

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

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2020.

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6 (Committee vote: _____)

7

8

Senator _____

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FOR THE COMMITTEE