

## MEMORANDUM

To: Joint Rules Committee

From: Hon. Brian J. Grearson, Chief Superior Judge, Patricia Gabel, Court Administrator

Date: March 22, 2020

Re: Proposed Emergency Legislative Changes

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- SENTENCE REVIEW/RECONSIDERATION

- At the last sentencing commission meeting the chair of the commission raised the issue of sentence review outside of the 90 day period was raised but it was not reviewed or approved. If reconsideration outside of 90 days was allowed upon stipulation of the parties it would not benefit one side over the other, since they both must agree. It provides an avenue to possibly revisit some cases that may be appropriate and could lead to release of some inmates. Proposed amendments in highlights.

13 V.S.A. § 7042. Sentence review

(a) Any court imposing a sentence under the authority of this title, within 90 days of the imposition of that sentence, or within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction, may upon its own initiative or motion of the defendant, reduce the sentence.

(b) A State's Attorney or the Attorney General, within seven business days of the imposition of a sentence, may file with the sentencing judge a motion to increase, reduce, or otherwise modify the sentence. This motion shall set forth reasons why the sentence should be altered. After hearing, the court may confirm, increase, reduce, or otherwise modify the sentence.

(c) After a motion is filed under subsection (b) of this section, a defendant's time for filing an appeal under 12 V.S.A. § 2383 shall commence to run upon entry of a final order under subsection (b).

(d) Any court imposing a sentence under the authority of this title may, at any time after imposition of sentence, reduce or otherwise modify the sentence, upon stipulation of a State's Attorney or the Attorney General and defendant.

### **Rule 35. Correction, Reduction and Modification of Sentence**

(a) Correction of Sentence. -- The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. -- The court, on its own initiative or on motion of the defendant, may reduce a sentence within 90 days after the sentence is imposed, or within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

(c) Modification of Sentence on Motion of Prosecuting Attorney. -- A motion to modify a sentence filed by the prosecuting attorney shall be made within seven business days of the date of imposition of sentence.

(d) Procedure. -- A request for relief under this rule shall be by motion, and the procedure shall be governed by Rule 47.

(e) Stipulation to reduce or modify - Any court imposing a sentence under the authority of this title may, at any time after imposition of sentence, reduce or otherwise modify the sentence, upon stipulation of a State's Attorney or the Attorney General and defendant.

- LANDLORD-TENANT –
  - Since judges do not view rent escrow hearings as emergencies and therefore are not holding hearings, there may be an unintended consequence of having more rent due at the time of the hearing. Currently under 12 VSA 4853a: “(d) If the court finds the tenant is obligated to pay rent and has failed to do so, the court **shall** order full or partial payment into court of rent as it accrues while the proceeding is pending **and rent accrued from the date of filing with the court the complaint for ejectment or the date the summons and complaint for ejectment were served on the tenant pursuant to Rule 3 of the Vermont Rules of Civil Procedure, whichever occurs first.**”  
Thus, currently when the hearing is finally held there will be a much higher number for the rent due from filing/service which a tenant will likely not be able to pay. By changing the “shall” to “may” is possibly the easiest fix to allow discretion with the judges.
  
- Criminal –
  - a. Presence in Court – I think this may be better for the SCOV but would suggest that VRCrP 43 be amended to specify that a court may permit a defendant to waive physical presence in the courtroom and to appear telephonically or on a

videoconference for any criminal proceeding that now requires their personal appearance

- b. Bail review/COR – Under 7554 we have to do bail review within 48 hours and COR review within 5 working days. I think that under our current conditions to operate under this is tight and difficult. I think these timeframes should be extended to 7 and 14 days respectively.

- MENTAL HEALTH

18 VSA 7615 (Hearing on App for Invol Treatment--10 days)

18 VSA 7625 (Hearing on App for Invol Medication-7 days)

Proposal is to waive the current statutory time frames while A.O. 49 (as amended) remains in effect.

- CIVIL SUSPENSION SUMMARY PROCEDURE

T. 23 § 1205 (g) and (h)

- The preliminary hearing is to be scheduled 21 days from date of offense (g);
- Final hearing on the merits is to be scheduled within 21 days of preliminary hearing (usually the arraignment) and a Final Hearing 42 days after the date of the offense;

Proposal is to waive the time frames for hearings on Civil Suspensions while A.O. 49 (as amended) is in effect.

- EXPUNGEMENT/SEALING TIME FRAMES

Proposal is to waive existing timelines for processing requests for sealing or expungement and for 120 days after A.O. 49 expires – generally T. 13 Chapter 230, §7601 § 7610 but all other statutes that allow for expungement and sealing.