

1 S.45

2 Introduced by Senators Sears, Baruth, Benning, Nitka and White

3 Referred to Committee on Judiciary

4 Date: January 26, 2021

5 Subject: Criminal procedure; corrections; probation

6 Statement of purpose of bill as introduced: This bill proposes to make  
7 discharge of probation presumptive after the midpoint review if the  
8 probationer meets certain criteria and to provide additional opportunities for  
9 discharge or term reduction for probationers who are not approved for  
10 discharge at the midpoint of their probation term.

11 An act relating to earned discharge from probation

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 28 V.S.A. § 251 is amended to read:~~

14 § 251. DURATION OF PROBATION

15 (a) The court placing a person on probation may terminate the period of  
16 probation and discharge the person at any time if such termination is warranted  
17 by the conduct of the offender and the ends of justice.

18 (b) Upon the recommendation of the Commissioner pursuant to subsection  
19 252(d) of this title, the court shall terminate the period of probation and

1 ~~discharge the person prior to the expiration of the probationer's term or deduct~~  
2 a portion of the specified probation term pursuant to subsection 252(d) of this  
3 title unless the court determines by clear and convincing evidence that  
4 discharge is not in the best interests of the person or that discharging the  
5 person will present a risk of danger to the victim of the offense or to the  
6 community. The court shall set forth the reasons for denying a motion for  
7 discharge or term reduction on the record.

8 (c) A probationer shall not be deemed ineligible for discharge or term  
9 reduction due to unpaid restitution, fees, or surcharges.

10 Sec. 2. 28 V.S.A. § 252 is amended to read:

11 § 252. CONDITIONS OF PROBATION

12 (a) Conditions, generally. The conditions of probation shall be such as the  
13 court in its discretion deems reasonably necessary to ensure that the offender  
14 will lead a law-abiding life or to assist the offender to do so. The court shall  
15 provide as an explicit condition of every sentence to probation that if the  
16 offender is convicted of another offense during the period for which the  
17 sentence remains subject to revocation, then the court may impose revocation  
18 of the offender's probation.

19 (b) Probation conditions. When imposing a sentence of probation, the  
20 ~~court may, as a condition of probation, require that the offender.~~

1 ~~(1) Work faithfully at a suitable employment or faithfully pursue a~~  
2 course of study or of vocational training that will equip the offender for  
3 suitable employment.

4 (2) Work faithfully for a prescribed number of hours at community  
5 service activity acceptable to the court, or, if so ordered by the court,  
6 acceptable to a probation officer.

7 (3) Undergo available medical or psychiatric treatment and remain at a  
8 specified institution if required for that purpose.

9 (4) Attend or reside at a facility established for the instruction,  
10 recreation, or residence of persons on probation.

11 (5) Support the offender's dependents and meet other family  
12 responsibilities.

13 (6) Make restitution or reparation to the victim of his or her conduct, or  
14 to the Victims' Compensation Fund to the extent it has made payment to or on  
15 behalf of the victim in accordance with 13 V.S.A. chapter 167, for the damage  
16 or injury ~~which~~ that was sustained. When restitution or reparation is a  
17 condition of the sentence, the court, in accordance with 13 V.S.A. § 7043, shall  
18 fix the amount thereof, which shall not exceed an amount the defendant can or  
19 will be able to pay, and shall fix the manner of performance.

20 ~~(7) Pay a fine authorized in accordance with law.~~

1           ~~(8) Refrain from purchasing or possessing a firearm or ammunition~~  
2           therefor, destructive device, or other dangerous weapon unless granted written  
3           permission by the court or probation officer.

4           (9) Report to a probation officer at reasonable times as directed by the  
5           court or the probation officer.

6           (10) Permit the probation officer to visit the offender at reasonable  
7           times at his or her home or elsewhere.

8           (11) Remain within the jurisdiction of the court, unless granted  
9           permission to leave by the court or the probation officer.

10          (12) Answer all reasonable inquiries by the probation officer and  
11          promptly notify the probation officer of any change in address or employment.

12          (13) Not in any way harass the victim or the family of the victim.

13          (14) Not contact the victim, unless this condition is specifically waived  
14          by the victim.

15          (15) Participate in the Restorative Justice Program conducted by a  
16          community reparative board, pursuant to chapter 12 of this title. The court  
17          may direct a reparative board to assist in determining restitution to the victim,  
18          as provided by subdivision (6) of this subsection.

19          (16) Submit to periodic polygraph testing if the offender is being placed  
20          on probation for a sex offense that requires registration pursuant to 13 V.S.A.

21          ~~chapter 167, subchapter 3.~~

1           (17) If the probation officer has reasonable grounds to believe the  
2 offender has violated a probation condition, permit a probation officer or  
3 designee to monitor or examine the offender's activities, communications, and  
4 use of any computer or other digital or electronic media, including cell phone,  
5 smartphone, digital camera, digital video camera, digital music player or  
6 recorder, digital video player or recorder, personal digital assistant, portable  
7 electronic storage device, gaming system, or any other contemporary device  
8 capable of the storage of digital electronic communication or data storage or  
9 access to the Internet or other computer or digital network.

10           (18) Satisfy any other conditions reasonably related to his or her  
11 rehabilitation. Such conditions may include prohibiting the use of alcohol,  
12 prohibiting having contact with minors, prohibiting or limiting the use of a  
13 computer or other electronic devices, and permitting a probation officer access  
14 to all computers or other digital or electronic media, mail covers, subscription  
15 services, and credit card statements. The court shall not impose a condition  
16 prohibiting the offender from engaging in any legal behavior unless the  
17 condition is reasonably related to the offender's rehabilitation or necessary to  
18 reduce risk to public safety.

19           (c) Certificate. When an offender is placed on probation, he or she shall be  
20 given a certificate explicitly setting forth the conditions upon which he or she  
21 is being released.

1 ~~(d) Review and recommendation for discharge.~~

2 ~~(1) The Commissioner shall review the record of each probationer~~  
3 ~~-serving a specified term during the month prior to the midpoint of that~~  
4 ~~probationer's specified term and may shall file a motion requesting the~~  
5 ~~sentencing court to dismiss the probationer from probation or deduct a portion~~  
6 ~~of the specified term from the period of probation if the offender:~~

7 ~~(A) has successfully completed a program or has attained a goal or~~  
8 ~~goals specified by the conditions of probation not been found to have violated~~  
9 ~~the conditions of probation by a court in the six months prior to the review;~~  
10 ~~and~~

11 ~~(B) is participating in the case plan.~~

12 ~~(2) If the probationer is not eligible to be discharged from probation~~  
13 ~~pursuant to subdivision (1) of this subsection, The the Commissioner may~~  
14 ~~include in the file a motion a to request that the court deduct a portion of the~~  
15 ~~specified term for each condition conditions completed or goal goals attained.~~  
16 ~~Any motion under this section shall be made pursuant to a rule adopted by the~~  
17 ~~Commissioner under 3 V.S.A. chapter 25 that shall provide that the decision to~~  
18 ~~make or refrain from making a motion shall be made at the sole discretion of~~  
19 ~~the Commissioner and shall not be subject to appeal.~~

20 ~~(3) If the Commissioner does not file a motion upon the midpoint~~  
21 ~~review pursuant to subdivisions (1) or (2) of this subsection, or if the court~~

1 ~~denies the Commissioner's motion, the Commissioner shall conduct a review~~  
2 every six months following the midpoint review. If the probationer has not  
3 been found by the court to have violated the terms of probation in the six  
4 months prior to the review and is participating in the case plan, the  
5 Commissioner shall file a motion requesting the sentencing court to dismiss  
6 the probationer from probation. If the probationer is found ineligible for the  
7 termination of the remainder of the term but has completed conditions or  
8 attained goals, the Commissioner may file a motion requesting the court  
9 deduct a portion of the remaining term of probation.

10 (4) Any motion under this section shall be made pursuant to a rule  
11 adopted by the Commissioner under 37 S.A. chapter 25.

12 Sec. 3. DEPARTMENT OF CORRECTIONS; PROBATION MIDPOINT

13 REVIEW; REPORT

14 (a) Beginning on July 1, 2021, the Department of Corrections shall collect  
15 the following data regarding the probation midpoint review process:

16 (1) the number of probation discharge or probation term reduction  
17 motions filed by the Department;

18 (2) the number of probation terms that were reduced or terminated  
19 pursuant to this Act; and

20 (3) the amount of time reduced from probation terms as a result of  
21 probation term reduction motions granted by the court.

1 ~~(b) On or before August 1, 2022 and August 1, 2023, the Department shall~~  
2 ~~report to the Joint Legislative Justice Oversight Committee with the data~~  
3 ~~collected pursuant to this section and any recommendations for further~~  
4 ~~legislative action to improve the probation midpoint review process.~~

5 Sec. 4. EFFECTIVE DATE

6 ~~This act shall take effect on July 1, 2021.~~

*Sec. 1. 28 V.S.A. § 200 is added to read:*

*§ 200. PURPOSE OF PROBATION*

*It is the policy of this State that the purpose of probation is to rehabilitate offenders, reduce the risk that they will commit a subsequent offense, and protect the safety of the victim and the community.*

*Sec. 2. 28 V.S.A. § 251 is amended to read:*

*§ 251. DURATION OF PROBATION*

*(a) The court placing a person on probation may terminate the period of probation and discharge the person at any time if such termination is warranted by the conduct of the offender and the ends of justice.*

*(b)(1) Upon the Commissioner's motion to discharge pursuant to subsection 252(d) of this title, the sentencing court shall terminate the period of probation and discharge the person at the midpoint of the probation term unless the prosecutor seeks a continuation of probation within 21 days of receipt of notice of the Commissioner's motion; and*

*(A) the court finds by a preponderance of the evidence that termination and discharge will present a risk of danger to the victim of the offense or to the community; or*

*(B) the court finds by clear and convincing evidence that the probationer is not substantially in compliance with the conditions of probation that are related to the probationer's rehabilitation or to victim or community safety.*

*(2) If the court grants the prosecutor's motion to continue probation, it may continue probation for the full term or any portion thereof. The court shall also review the conditions of probation and remove any conditions that are no longer necessary for the remainder of the term.*

(c) A probationer shall not be deemed ineligible for discharge or term reduction due to unpaid restitution, fees, or surcharges.

Sec. 3. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

(a) Conditions, generally. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the offender will lead a law-abiding life or to assist the offender to do so. The court shall provide as an explicit condition of every sentence to probation that if the offender is convicted of another offense during the period for which the sentence remains subject to revocation, then the court may impose revocation of the offender's probation.

(b) Probation conditions. When imposing a sentence of probation, the court may, as a condition of probation, require that the offender:

(1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(2) Work faithfully for a prescribed number of hours at community service activity acceptable to the court, or, if so ordered by the court, acceptable to a probation officer.

(3) Undergo available medical or psychiatric treatment and remain at a specified institution if required for that purpose.

(4) Attend or reside at a facility established for the instruction, recreation, or residence of persons on probation.

(5) Support the offender's dependents and meet other family responsibilities.

(6) Make restitution or reparation to the victim of his or her conduct, or to the Victims' Compensation Fund to the extent it has made payment to or on behalf of the victim in accordance with 13 V.S.A. chapter 167, for the damage or injury ~~which~~ that was sustained. When restitution or reparation is a condition of the sentence, the court, in accordance with 13 V.S.A. § 7043, shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance.

(7) Pay a fine authorized in accordance with law.

(8) Refrain from purchasing or possessing a firearm or ammunition therefor, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer.

*(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.*

*(10) Permit the probation officer to visit the offender at reasonable times at his or her home or elsewhere.*

*(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.*

*(12) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.*

*(13) Not in any way harass the victim or the family of the victim.*

*(14) Not contact the victim, unless this condition is specifically waived by the victim.*

*(15) Participate in the Restorative Justice Program conducted by a community reparative board, pursuant to chapter 12 of this title. The court may direct a reparative board to assist in determining restitution to the victim, as provided by subdivision (6) of this subsection.*

*(16) Submit to periodic polygraph testing if the offender is being placed on probation for a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3.*

*(17) If the probation officer has reasonable grounds to believe the offender has violated a probation condition, permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic media, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.*

*(18) Satisfy any other conditions reasonably related to his or her rehabilitation. Such conditions may include prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements. The court shall not impose a condition prohibiting the offender from engaging in any legal behavior unless the condition is reasonably related to the offender's rehabilitation or necessary to reduce risk to public safety.*

*(c) Certificate. When an offender is placed on probation, he or she shall be given a certificate explicitly setting forth the conditions upon which he or she is being released.*

*(d) Review and recommendation for discharge.*

*(1) The Commissioner shall review the record of each probationer serving a specified term during the month prior to the midpoint of that probationer's specified term and ~~may~~ shall file a motion requesting the sentencing court to dismiss the probationer from probation ~~or deduct a portion of the specified term from the period of probation if the offender:~~*

*(A) has successfully completed a program or has attained a goal or goals specified by the conditions of probation not been found by the court to have violated the conditions of probation in the six months prior to the review;*

*(B) is not serving a sentence for committing a crime specified in 13 V.S.A. chapter 19, subchapters 6 and 7; 13 V.S.A. chapter 72, subchapter 1; or 13 V.S.A. § 2602; and*

*(C) has completed any rehabilitative or risk reduction services, the duration of which are set and knowable at the outset of probation, and that are required as a condition of probation.*

*~~The Commissioner may include in the motion a request that the court deduct a portion of the specified term for each condition completed or goal attained. Any motion under this section shall be made pursuant to a rule adopted by the Commissioner under 3 V.S.A. chapter 25 that shall provide that the decision to make or refrain from making a motion shall be made at the sole discretion of the Commissioner and shall not be subject to appeal.~~*

*(2) If the probationer does not meet the criteria set forth in subdivision (1) of this subsection, or if the court denies the Commissioner's motion to discharge, the Commissioner shall file a motion requesting the sentencing court to discharge the probation term once the probationer meets the criteria set forth in subdivision (1) of this subsection.*

*(3) The prosecutor shall make a reasonable effort to notify any victim of record of a motion filed to reduce a probationer's term pursuant to this subsection. "Reasonable effort" means attempting to contact the victim by first-class mail at the victim's last known address and by telephone at the victim's last known phone number.*

#### *Sec. 4. DEPARTMENT OF CORRECTIONS; PROBATION MIDPOINT REVIEW; REPORT*

*(a) Beginning on July 1, 2021, the Department of Corrections shall collect the following data regarding the probation midpoint review process:*

(1) the number of probation discharge or probation term reduction motions filed by the Department;

(2) the number of probation terms that were reduced or terminated pursuant to this Act; and

(3) the amount of time reduced from probation terms as a result of probation term reduction motions granted by the court.

(b) On or before August 1, 2022 and August 1, 2023, the Department shall report to the Joint Legislative Justice Oversight Committee with the data collected pursuant to this section and any recommendations for further legislative action to improve the probation midpoint review process.

**Sec. 5 SENTENCING COMMISSION; PROBATION TERMS FOR MISDEMEANORS**

During the 2021 legislative interim, the Vermont Sentencing Commission shall review 28 V.S.A. § 205 and the December 3, 2020 report of the Pew Charitable Trusts, "States Can Shorten Probation and Protect Public Safety," and consider whether Vermont should limit the duration of probation terms for misdemeanor offenses to two years. On or before October 1, 2021, the Commission shall issue its recommendation pursuant to this section to the Joint Legislative Justice Oversight Committee.

**Sec. 6. EFFECTIVE DATE**

This act shall take effect on July 1, 2021.