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S.183

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

Referred to Committee on Judiciary

Date: January 4, 2022

Subject: Corrections; probation; midpoint review

Statement of purpose of bill as introduced: This bill proposes to establish that the midpoint probation review process applies retroactively and is not available to probationers who are subject to pending criminal charges.

An act relating to midpoint probation review

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

~~Sec. 1. 28 V.S.A. § 252 is amended to read:~~

~~§ 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW~~

~~* * *~~

~~(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 shall file a motion requesting the sentencing court to dismiss the probationer from probation if the offender.~~

1 (A) has not been found by the court to have violated the conditions
2 of probation in the six months prior to the review;

3 (B) is not serving a sentence for committing a crime specified in
4 13 V.S.A. chapter 19, subchapters 6 and 7; 13 V.S.A. chapter 72, subchapter 1;
5 or 13 V.S.A. § 2602;

6 (C) is not subject to a pending criminal charge; and

7 (D) has completed those rehabilitative or risk reduction services
8 required as a condition of probation that have a duration that is set and
9 knowable at the outset of probation.

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

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

1 ~~(4) Notwithstanding 1 V.S.A. § 214, this subsection shall apply~~
2 ~~retroactively to any probationer serving a specified term who had not reached~~
3 ~~the midpoint of that specified term on July 1, 2021.~~

4 Sec. 2. EFFECTIVE DATE

5 ~~This act shall take effect on passage.~~

Sec. 1. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

** * **

(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 shall file a motion requesting the sentencing court to dismiss the probationer from probation if the offender:

(A) has 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 those rehabilitative or risk reduction services required as a condition of probation that have a duration that is set and knowable at the outset of probation.

(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) If a probationer meets the criteria set forth in subdivision (1) of this subsection and is subject to a pending criminal charge or violation of probation complaint, the Commissioner may file a motion requesting the sentencing court to dismiss the probationer from probation pursuant to this subsection. The motion shall identify the pending criminal charge or probation violation. After any pending criminal charges and probation violations are resolved, and if the probationer still meets the criteria set forth

in subdivisions (1) of this subsection, the Commissioner shall file the motion requesting the sentencing court to dismiss the probationer from probation.

~~(3)~~(4) *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.*

(5) Notwithstanding 1 V.S.A. § 214, and notwithstanding the requirement in subdivision (1) of this subsection that the Commissioner review the probationer's record during the month prior to the midpoint of that probationer's specified term, this subsection shall apply retroactively to any probationer serving a specified term of probation. If the probationer has already reached the midpoint of that probationer's specified term on or before the effective date of this act, the Commissioner shall review the probationer's record as soon as possible for purposes of filing a motion pursuant to this section.

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 following 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.*

(3) Notwithstanding 1 V.S.A. § 214, this subsection shall apply retroactively to any probationer serving a specified term of probation.

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on March 31, 2022.