

# Senate Calendar

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WEDNESDAY, FEBRUARY 24, 2021

SENATE CONVENES AT: 1:00 P.M.

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**ACTION CALENDAR**

**NEW BUSINESS**

**Third Reading**

**S. 86.**

An act relating to miscellaneous changes to laws related to vehicles and vessels.

**S. 87.**

An act relating to emergency provisions for the operation of government.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 45.**

An act relating to earned discharge from probation.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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.

(Committee vote: 5-0-0)

## Senate Resolution For Action

### S.R. 8.

Senate resolution relating to adoption of a temporary Rule 44A.

**PENDING QUESTION:** Shall the resolution be adopted?

(For Text of resolution, see Senate Journal for Tuesday, February 23, 2021, page 140)

## NOTICE CALENDAR

### Second Reading

#### Favorable with Recommendation of Amendment

### S. 11.

An act relating to prohibiting robocalls.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2464e is added to read:

§ 2464e. ROBOCALLS; PROHIBITION; PENALTY

(a) Intent. It is the intent of the General Assembly in adopting this section:

(1) to create a State law prohibition on the use of automatic telephone dialing systems and on the placement of robocalls to Vermont consumers that is coextensive with the federal limitations created in the Telephone Consumer Protection Act and the Telemarketing and Consumer Fraud and Abuse Prevention Act; and

(2) to continue to permit certain robocalls to the extent they are allowed under federal law, including:

(A) calls made for an emergency purpose;

(B) calls made with the prior express written consent of the called party;

(C) calls conveying messages that are purely informational;

(D) calls concerning the collection of a debt but not including calls that attempt to sell consumers services to reduce debt;

(E) political calls;



(F) calls from health care providers; and

(G) messages from charities, provided that if the call originates from a person whom the charity hires to make a call on the charity's behalf, the call may only go to members of the charity or prior donors, and provided further that such callers include an automated option to allow a consumer to stop future calls.

(b) Definitions. As used in this section, "automatic telephone dialing system" means equipment that has the capacity:

(1) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(2) to dial such numbers.

(c) Prohibition. A person shall not initiate a telephone call to a Vermont consumer using an automatic telephone dialing system or an artificial or prerecorded voice in violation of the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, or the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101–6108, and the regulations adopted pursuant to those laws.

(d) Civil violation.

(1) A violation of this section constitutes a violation of section 2453 of this title.

(2) Each prohibited telephone call constitutes a separate violation under this subsection.

(3)(A) A person who receives a telephone call in violation of this section may bring an action in Superior Court for damages or a civil penalty, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees.

(B) The court may issue an award for the greater of a person's damages or a civil penalty of \$500.00 for a first violation and \$1,000.00 for each subsequent violation.

(e) Criminal penalties.

(1) A person who violates this section shall be imprisoned for not more than 90 days or fined not more than \$1,000.00 per violation, or both.

(2) Each telephone call constitutes a separate violation under this subsection.

(f) The Attorney General shall exercise his or her authority and discretion to work cooperatively with other state and federal government entities to identify callers who initiate robocalls to consumers in violation of this section and to enforce the provisions of this section regardless of the location of the caller.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

(Committee vote: 5-0-0)

**NOTICE OF JOINT ASSEMBLY**

**February 25, 2021 - 2:00 p.m. – House Chamber** - Pursuant to J.R.S. 13 - Election of three (3) trustees for the University of Vermont and State Agricultural College.

Ballots must be received by Noon, Thursday, February 25, 2021.

**JFO NOTICE**

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

**JFO #3030** - \$450,000 to the VT Department of Disabilities, Aging and Independent Living from the Kessler Foundation. Funds will be used to support the expansion or re-designation of current positions in the Department and to create three (3) limited service positions to assist Social Security Disability Insurance and Supplemental Security Income beneficiaries to transition to self-sustaining employment. The request includes one (1) Vocational Rehabilitation Benefits Counselor and two (2) Vocational Rehabilitation Counselor II to complete the work. *Kessler grant funds will support 70% of the VR Benefit Counselor position and 21% of the VR Counselor II positions. The remaining balance will be covered by VR federal funds.*

*[JFO received 1/25/2021]*

**JFO #3031** - \$450,000 to the Department of Public Safety from the Office of Justice Programs for the services and support for victims in the immediate aftermath and during the investigation of a crime. The grant will fully fund one (1) limited-service position, Victim Services Specialist, to provide these services through 9/30/2023 and will also cover \$15,417 in indirect departmental costs.

*[JFO received 1/25/2021]*

**JFO #3032** - \$206,394 to the VT Dept. of Environmental Conservation from the United States Climate Alliance, United Nations Fund, for one (1) limited service position, Environmental Analyst VII, to serve in a leadership role in advancing Vermont's climate mitigation priorities. Position to be funded through 9/30/22.

*[JFO received 1/25/2021]*

**JFO #3033** - One (1) limited service position, Criminal Intelligence Analyst, to the VT. Dept of Public Safety to support information sharing and analysis to prevent and prepare for hazards and threats. Funds from the US Dept. of Homeland Security from previously awarded JFO Grant #2212.

*[JFO received 1/27/2021]*

**JFO #3034** - \$200,000,000 to the VT Agency of Administration from the US Dept. of the Treasury, Emergency Rental Assistance Program. The funds will be used to assist eligible households that have difficulty making timely payments of rent and utilities due to the COVID-19 pandemic. Included in the funding are five (5) limited service positions to administer this sizable grant program.

*[JFO received 2/3/2021]*

**JFO #3035** - \$550,749 to the VT Agency of Human Services from the Center for Disease Control and Prevention to enhance and coordinate healthy aging efforts within the 'Healthy Brain Initiative' framework. Funds will be used to develop systemic public health approaches to improve the public health approach to Alzheimer's and related dementias and decrease preventable hospitalizations among Vermonters 65 and older with Alzheimer's and related dementias. Two (2) limited service positions: One (1) Public Health Program Administrator and one (1) Public Health Analyst II to administer the program.

*[JFO received 2/4/2021]*

**JFO #3036** - \$3,800,000 to the VT Dept of Health from the Center for Disease Control and Prevention to increase and sustain the public health approach to suicide prevention. This grant includes funding for three (3) limited service positions. Two (2) positions in the Dept of Health: Public Health Programs Administrator and Public Health Analyst II. One (1) position in the Dept of Mental Health: Marketing and Outreach Coordinator. Grant amount is \$760,000 per year for 5 years.

*[JFO received 2/16/2021]*

**JFO #3037** - \$135,000 to the VT Dept of Mental Health from Vibrant Emotional Health for the development of the 988-implementation plan to ensure compliance with the federal mandate for universal access to suicide and prevention services by July 16, 2022. *[Note: One (1) limited service position is included within JFO #3036].*

*[JFO received 2/16/2021]*

**JFO #3038** - \$40,000 to the VT Agency of Commerce and Community Development from the Chittenden County Regional Planning Commission. ACCD is a sub-grantee of the Chittenden County Regional Planning Commission and is awarded a maximum of \$40,000; original funds are from the U.S. Economic Development Administration. Funds will be used for work related to the West Central Vermont Comprehensive Economic Development Strategy project.

*[JFO received 2/18/2021]*

## **FOR INFORMATION ONLY**

### **CROSSOVER DATES**

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 12, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by Friday March 12, 2021.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 19, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

**Note:** The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

**Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills.**