

Journal of the Senate

WEDNESDAY, APRIL 28, 2021

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 59

A message was received from the House of Representatives by Ms. Melissa Kucserik, its First Assistant Clerk, as follows:

Madam President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 265. An act relating to the Office of the Child, Youth, and Family Advocate.

H. 446. An act relating to miscellaneous natural resources and development subjects.

H. 449. An act relating to the membership and duties of the Vermont Pension Investment Commission and the creation of the Pension Benefits, Design, and Funding Task Force.

In the passage of which the concurrence of the Senate is requested.

Rules Suspended; Bill Referred to Committee on Appropriations

H. 433.

Pending entry on the Calendar for notice, on motion of Senator Balint, the rules were suspended and House bill entitled:

An act relating to the Transportation Program and miscellaneous changes to laws related to transportation.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Balint, the rules were suspended, and the bill carrying an appropriation and requiring the expenditure of funds, was referred to the Committee on Appropriations under Senate Rule 31.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 145.

By Senator Champion,

An act relating to permitting municipalities to regulate open carrying of firearms.

To the Committee on Judiciary.

S. 146.

By Senators Perchlik, Chittenden, Hardy, Hooker, Lyons and Pearson,

An act relating to space heating systems owned or controlled by the State.

To the Committee on Institutions.

H. 265.

An act relating to the Office of the Child, Youth, and Family Advocate.

To the Committee on Rules.

H. 446.

An act relating to miscellaneous natural resources and development subjects.

To the Committee on Rules.

H. 449.

An act relating to the membership and duties of the Vermont Pension Investment Commission and the creation of the Pension Benefits, Design, and Funding Task Force.

To the Committee on Rules.

Third Reading Ordered**H. 89.**

Senator White, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to limiting liability for agritourism.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 46.

Senator Lyons, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to miscellaneous provisions of mental health law.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 18 V.S.A. § 7503 is amended to read:

§ 7503. APPLICATION FOR VOLUNTARY ADMISSION

* * *

(b) Before the person may be admitted as a voluntary patient, ~~he or she~~ the person shall give ~~his or her~~ consent in writing on a form adopted by the Department. The consent shall include a representation that:

(1) the person understands that ~~his or her~~ treatment will involve inpatient status;

(2) ~~that he or she~~ the person desires to be admitted to the hospital, ~~and;~~

(3) ~~that he or she~~ the person consents to admission voluntarily, without any coercion or duress; ~~and~~

(4) the person understands that inpatient treatment may be on a locked unit and a requested discharge may be deferred if the treating physician determines that the person is a person in need of treatment pursuant to section 7101 of this title.

* * *

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 104.

Senator Terenzini, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to considerations in facilitating the interstate practice of health care professionals using telehealth.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, Facilitation of Interstate Practice Using Telehealth Working Group; report, in subsection (b), by inserting a new subdivision to be subdivision (5) to read as follows:

(5) the Commissioner of Mental Health or designee;

And by renumbering the remaining subdivisions to be numerically correct.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 108.

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to Vermont standards for issuing a Clean Water Act section 401 certification.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 1253(h) is added to read:

(h)(1) The Secretary shall administer a Clean Water Act Section 401 certification program to review activities that require a federal license or permit to ensure that a proposed activity complies with the Vermont Water Quality Standards, as well as with any other appropriate requirement of State law, including:

(A) 10 V.S.A. chapter 37 (wetlands protection and water resources management);

(B) 10 V.S.A. chapter 41 (regulation of stream flow);

(C) 10 V.S.A. § 1264 (stormwater management);

(D) 29 V.S.A. chapter 11 (management of lakes and ponds); and

(E) the Agency of Natural Resources Rules for Water Withdrawals for Snowmaking.

(2) The Secretary of Natural Resources shall not grant an application for certification under Section 401 of the Clean Water Act unless the applicant demonstrates all of the following:

(A) there is no practicable alternative to the proposed activity that would have a less adverse impact on waters and wetlands of the State and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequences;

(B) the proposed activity will not result in the violation of any applicable water quality criteria established in the Vermont Water Quality Standards; and

(C) the proposed activity will not result in a violation of the State's antidegradation policy.

(3)(A) An alternative is considered practicable under subdivision (2)(A) of this subsection (h) if it is available and capable of being completed after taking into consideration cost, existing technology, and logistics in light of overall purposes of the proposed activity.

(B) Failure to comply with the requirements of subdivision (2)(A) of this subsection (h) shall not be the basis for denial of an application for a certification under Section 401 of the Clean Water Act if the proposed activity is exempt from those requirements under a rule adopted by the Secretary.

(4) The Secretary may issue a certification required by this subsection to any general permit or authorization issued by a federal agency. An applicant's compliance with that federal permit or authorization shall be presumed to be in compliance with the certification unless the Secretary determines that an individual review of the applicant's activity is necessary to assure compliance with the Vermont Water Quality Standards and other appropriate State laws.

Sec. 2. AGENCY OF NATURAL RESOURCES; VERMONT WATER QUALITY STANDARDS; RULEMAKING

The Secretary of Natural Resources shall amend the Vermont Water Quality Standards (VWQS) to include the following:

(1) An amendment to the Classification of State Waters to clarify that with regard to all Class I and II wetlands, as defined in 10 V.S.A. § 902, the uses to be protected include the functions and values of the wetland as described in Section 5 of the Vermont Wetland Rules.

(2) An amendment to the antidegradation policy to clarify that wetlands and their functions and values shall be protected as described by the Vermont Wetland Rules.

(3) Any additional provisions that the Secretary of Natural Resources determines are necessary to implement the requirements of 10 V.S.A. § 1253(h), including any exemptions to the requirements of 10 V.S.A. § 1253(h)(2)(A) for projects that are not likely to have significant impacts on water quality or wetland functions or values. Railroad projects or State or municipal road or highway projects shall be exempt from the requirements of 10 V.S.A. § 1253(h)(2)(A).

Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

(a) The Secretary of Natural Resources shall file with the Secretary of State under 3 V.S.A. § 838 a copy of the proposed rules required by Sec. 2 of this act within 90 days following the effective date of this act.

(b) On or before January 15, 2022, the Secretary of Natural Resources shall submit to the House Committee on Natural Resources, Fish, and Wildlife and the Senate Committee on Natural Resources and Energy a report regarding the status of the rulemaking required by Sec. 2 of this act. The report shall include a draft of the rules.

(c) On or before March 1, 2022, the Secretary of Natural Resources shall file with the Secretary of State under 3 V.S.A. § 841 a final proposal of the rules required by Sec. 2 of this act.

Sec. 4. EFFECTIVE DATES

(a) This section and Secs. 2 and 3, VWQS rulemaking, shall take effect on passage.

(b) Sec. 1, certification program, shall take effect on the effective date of the rules required to be adopted under Sec. 2.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

House Proposal of Amendment Concurred In

S. 45.

House proposal of amendment to Senate bill entitled:

An act relating to earned discharge from probation.

Was taken up.

The House proposes to the Senate to amend the bill 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. § 205(b) is amended to read:

(b)(1) At or before the sentencing hearing, the prosecutor's office shall inform the victim of the mid-point review process for probationers, and that the defendant may be eligible for early discharge from probation pursuant to sections 251 and 252 of this title.

(2) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for which the offender has been placed on probation shall have the right to request and receive from the Department of Corrections information regarding the offender's general compliance with the specific conditions of probation. Nothing in this section shall require the Department of Corrections to disclose any confidential information revealed by the offender in connection with participation in a treatment program.

Sec. 3. 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. 4. 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:

* * *

(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 those rehabilitative or risk reduction services required as a condition of probation which have a duration that is set and knowable at the outset 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. 5. 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. 6. 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. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Bill Called Up**S. 100.**

Senate bill of the following title was called up by Senator Balint, and, under the rule, placed on the Calendar for action tomorrow:

An act relating to universal school breakfast and lunch for all public school students and to creating incentives for schools to purchase locally produced foods.

Message from the House No. 60

A message was received from the House of Representatives by Ms. Alona Tate, its Second Assistant Clerk, as follows:

Madam President:

I am directed to inform the Senate that:

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 26. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The House has considered Senate proposal of amendment to the following House bill:

H. 128. An act relating to limiting criminal defenses based on victim identity.

And has severally concurred therein.

Adjournment

On motion of Senator Balint, the Senate adjourned until one o'clock in the afternoon on Thursday, April 29, 2021.