

1 **BILL NO.**
2 Introduced by
3 Referred to Committee on
4 Date:
5 Subject:
6 Statement of purpose of bill as introduced: This bill proposes to: (1) better align the standards in
7 28 V.S.A. §§ 251 and 252; (2) give the Department of Corrections discretion to file mid-point
8 probation review motions when the probationer is facing either a violation of probation or
9 criminal charges; (3) require courts to either stay or dismiss without prejudice the motion until
10 such time as the violation of probation or criminal charges are fully adjudicated; and (4) add
11 violations of abuse prevention orders from the list of offenses excluded from 28 V.S.A. § 252.

12 An act relating to probation mid-point review

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

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

15 § 251. DURATION OF PROBATION

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

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

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

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

6 (2) Notwithstanding subdivision (1) of this subsection, the court shall either stay or dismiss
7 without prejudice the motion to discharge if at the time such motion is filed the person
8 subject to the motion is also the subject of a pending violation of probation complaint or
9 pending criminal charges. If the Court stays the motion to discharge, the stay shall be lifted
10 when the pending violation of probation complaint or pending criminal charges are fully
11 adjudicated.

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

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

18 Sec. 2. 28 V.S.A. § 252(d) is amended to read:

19 § 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

20 (d) Review and recommendation for discharge.

21 (1) The Commissioner shall review the record of each probationer serving a specified term
22 during the month prior to the midpoint of that probationer's specified term and shall file a

1 motion requesting the sentencing court to dismiss the probationer from probation if the
2 offender:

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

5 (B) is not serving a sentence for committing a crime specified in 13 V.S.A. chapter 19,
6 subchapters 6 and 7; 13 V.S.A. chapter 72, subchapter 1; 13 V.S.A. § 1030; or 13 V.S.A.
7 § 2602; and

8 ~~(C) has completed those rehabilitative or risk reduction services required as a condition~~
9 ~~of probation which have a duration that is set and knowable at the outset of probation~~ is in
10 compliance with the conditions of probation that are related to the probationer's
11 rehabilitation or to victim or community safety.

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

16 (3) Notwithstanding subdivision (1) of this subsection, the Commissioner may refrain from
17 filing a motion to discharge if, at the time of the Commissioner's review of the probationer's
18 record, the probationer is the subject of a pending violation of probation complaint or of
19 pending criminal charges. If the Commissioner files a motion to discharge a probationer who
20 is the subject of a pending violation of probation complaint or of pending criminal charges,
21 the motion shall identify the pending violations or charges. The Commissioner shall file a
22 motion as soon as the pending violations of probation or pending criminal charges are fully
23 adjudicated provided the criteria set forth in subdivision (1) of this subsection are still met.

1 (~~3~~4) The prosecutor shall make a reasonable effort to notify any victim of record of a motion
2 filed to reduce a probationer's term pursuant to this subsection. "Reasonable effort" means
3 attempting to contact the victim by first-class mail at the victim's last known address and by
4 telephone at the victim's last known phone number.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect upon passage.