

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 45
3 entitled “An act relating to earned discharge from probation” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

8 § 251. DURATION OF PROBATION

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

12 (b)(1) Upon the recommendation of the Commissioner pursuant to
13 subsection 252(d) of this title, the sentencing court shall terminate the period of
14 probation and discharge the person at the midpoint of the probation term unless
15 the Commissioner seeks a continuation of probation and the court finds by
16 [clear and convincing evidence OR a preponderance of the evidence] that:

17 (A) termination and discharge will present a risk of danger to the
18 victim of the offense or to the community; or

19 (B) defendant is not in compliance with conditions of probation.

20 (2) In granting the Commissioner’s motion to continue probation, the
21 court may continue probation for the full term or any portion thereof. The

1 court may also modify the conditions of probation for the remainder of the
2 term.

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

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

6 § 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (17) If the probation officer has reasonable grounds to believe the
16 offender has violated a probation condition, permit a probation officer or
17 designee to monitor or examine the offender's activities, communications, and
18 use of any computer or other digital or electronic media, including cell phone,
19 smartphone, digital camera, digital video camera, digital music player or
20 recorder, digital video player or recorder, personal digital assistant, portable
21 electronic storage device, gaming system, or any other contemporary device

1 capable of the storage of digital electronic communication or data storage or
2 access to the Internet or other computer or digital network.

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

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

15 (d) Review and recommendation for discharge.

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

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

4 (B) is not serving a sentence for committing [a crime specified in 13
5 V.S.A. §5301 OR a crime specified in 13 V.S.A. chapter 19, subchapters 6 and
6 7, or 13 V.S.A. chapter 72, subchapter 1]; and

7 (C) has completed any determinate period of rehabilitative or risk
8 reduction programming required as a condition of probation and completed
9 any indeterminate period of programming to the satisfaction of the probation
10 officer. The probation officer shall maintain sufficient records so that the
11 determination of completion of an indeterminate period of programming may
12 be reviewed by the Commissioner and by the court.

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

1 (3) If the Commissioner does not file a motion upon the midpoint
2 review pursuant to subdivisions (1) or (2) of this subsection, or if the court
3 denies the Commissioner’s motion, the Commissioner shall conduct a review
4 upon each condition of probation completed by the probationer. If the
5 probationer meets the criteria set forth in subdivision (d)(1) of this section, the
6 Commissioner shall file a motion requesting the sentencing court to dismiss
7 the probationer from probation. If the probationer is found ineligible for
8 termination of the remainder of the term, the Commissioner may file a motion
9 requesting a reduction in the term of probation.

10 (4) Any motion under this section shall be made pursuant to a rule
11 adopted by the Commissioner under 3 V.S.A. chapter 25. The Commissioner
12 shall make a good faith effort to notify any victims of record about a motion
13 filed to reduce a probationer’s term pursuant to this subsection.

14 Sec. 3. DEPARTMENT OF CORRECTIONS; PROBATION MIDPOINT
15 REVIEW; REPORT

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

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

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

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

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

7 Sec. 4. EFFECTIVE DATE

8 This act shall take effect on July 1, 2021.

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE