

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. § 200 is added to read:**

8 **§ 200. PURPOSE OF PROBATION**

9 **It is the policy of this State that the purpose of probation is to rehabilitate**  
10 **offenders, reduce the risk that they will commit a subsequent offense, and**  
11 **protect the safety of the victim and of the community.**

12 Sec. 2. 28 V.S.A. § 251 is amended to read:

13 § 251. DURATION OF PROBATION

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

17 (b)(1) Upon the Commissioner’s motion to discharge pursuant to  
18 subsection 252(d) of this title, the sentencing court shall terminate the period of  
19 probation and discharge the person at the midpoint of the probation term unless  
20 the prosecutor seeks a continuation of probation and the court finds by a  
21 preponderance of the evidence that:

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

3           (B) defendant has not completed any determinate period of  
4 rehabilitative or risk reduction services required as a condition of probation or  
5 is not substantially in compliance with the conditions of probation.

6           OR

7           Remove (B)

8           (2) If the court grants the prosecutor's motion to continue probation, it  
9 may continue probation for the full term or any portion thereof. The court  
10 shall also review the conditions of probation and remove any conditions that  
11 are no longer necessary for the remainder of the term.

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

14           Sec. 3. 28 V.S.A. § 252 is amended to read:

15           § 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

16           (a) Conditions, generally. The conditions of probation shall be such as the  
17 court in its discretion deems reasonably necessary to ensure that the offender  
18 will lead a law-abiding life or to assist the offender to do so. The court shall  
19 provide as an explicit condition of every sentence to probation that if the  
20 offender is convicted of another offense during the period for which the

1 sentence remains subject to revocation, then the court may impose revocation  
2 of the offender's probation.

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

5 (1) Work faithfully at a suitable employment or faithfully pursue a  
6 course of study or of vocational training that will equip the offender for  
7 suitable employment.

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

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

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

15 (5) Support the offender's dependents and meet other family  
16 responsibilities.

17 (6) Make restitution or reparation to the victim of his or her conduct, or  
18 to the Victims' Compensation Fund to the extent it has made payment to or on  
19 behalf of the victim in accordance with 13 V.S.A. chapter 167, for the damage  
20 or injury ~~which~~ that was sustained. When restitution or reparation is a  
21 condition of the sentence, the court, in accordance with 13 V.S.A. § 7043, shall

1 fix the amount thereof, which shall not exceed an amount the defendant can or  
2 will be able to pay, and shall fix the manner of performance.

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

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

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

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

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

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

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

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

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

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

4           (17) If the probation officer has reasonable grounds to believe the  
5           offender has violated a probation condition, permit a probation officer or  
6           designee to monitor or examine the offender’s activities, communications, and  
7           use of any computer or other digital or electronic media, including cell phone,  
8           smartphone, digital camera, digital video camera, digital music player or  
9           recorder, digital video player or recorder, personal digital assistant, portable  
10          electronic storage device, gaming system, or any other contemporary device  
11          capable of the storage of digital electronic communication or data storage or  
12          access to the Internet or other computer or digital network.

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

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

4 (d) Review and recommendation for discharge.

5 (1) The Commissioner shall review the record of each probationer  
6 serving a specified term during the month prior to the midpoint of that  
7 probationer's specified term and ~~may~~ shall file a motion requesting the  
8 sentencing court to dismiss the probationer from probation ~~or deduct a portion~~  
9 ~~of the specified term from the period of probation~~ if the offender:

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

13 (B) is not serving a sentence for committing a crime specified in 13  
14 V.S.A. chapter 19, subchapters 6 and 7, 13 V.S.A. chapter 72, subchapter 1, or  
15 13 V.S.A. § 2602; and

16 (C) has completed any determinate period of rehabilitative or risk  
17 reduction services required as a condition of probation and is substantially in  
18 compliance with the remaining conditions of probation. and completed any  
19 indeterminate period of programming to the satisfaction of the probation  
20 officer. The probation officer shall maintain sufficient records so that the

1 ~~determination of completion of an indeterminate period of programming may~~  
2 ~~be reviewed by the court.~~

3 The Commissioner may include in the motion a request that the court  
4 deduct a portion of the specified term for each condition completed or goal  
5 attained. Any motion under this section shall be made pursuant to a rule  
6 adopted by the Commissioner under 3 V.S.A. chapter 25 that shall provide that  
7 the decision to make or refrain from making a motion shall be made at the sole  
8 discretion of the Commissioner and shall not be subject to appeal.

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

16 (4) ~~Any motion under this section shall be made pursuant to a rule~~  
17 ~~adopted by the Commissioner under 3 V.S.A. chapter 25.~~ The ~~prosecutor~~ shall  
18 make a good faith effort to notify any victims of record a motion filed to  
19 reduce a probationer's term pursuant to this subsection.

1       Sec. 4. DEPARTMENT OF CORRECTIONS; PROBATION MIDPOINT  
2               REVIEW; REPORT

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

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

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

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

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

15       **Sec. 5 SENTENCING COMMISSION; PROBATION TERMS FOR**  
16 **MISDEMEANORS**

17               During the 2021 legislative interim, the Vermont Sentencing Commission  
18 shall review 28 V.S.A. § 205 and the December 3, 2020 report of the Pew  
19 Charitable Trusts, “States Can Shorten Probation and Protect Public Safety,”  
20 and consider whether Vermont should limit the duration of probation terms for  
21 misdemeanor offenses to two years. On or before October 1, 2021, the



1 Commission shall issue its recommendation pursuant to this section to the  
2 Joint Legislative Justice Oversight Committee.

3 Sec. 6. EFFECTIVE DATE

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

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9 (Committee vote: \_\_\_\_\_)

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11

Senator \_\_\_\_\_

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FOR THE COMMITTEE