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S.15

Introduced by Senators Sears, Baruth, Hashim, Lyons and Vyhovsky

Referred to Committee on

Date:

Subject: Criminal procedures; sentencing; presumptive probation

Statement of purpose of bill as introduced: This bill proposes an initiative to help create greater racial equity in sentencing. To achieve this goal, the bill establishes presumptive probation for nonviolent felonies and misdemeanors for first-time offenders. The bill permits prosecutors to file a motion and present evidence to rebut the presumption and argue for an alternative sentence. A defendant may also present evidence in response supporting presumptive probation. The court hearing the motion must consider certain relevant factors and issue a written decision. The court’s decision is appealable to the Vermont Supreme Court. The bill also reorganizes the definitions of nonviolent felonies and misdemeanors into the “definitions” section governing probation.

An act relating to establishing presumptive probation for nonviolent crimes

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

2 Sec. 1. 13 V.S.A. § 7031 is amended to read:

3 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

4 \* \* \*

5 (d) A person who receives a zero minimum sentence or presumptive  
6 probation pursuant to subdivision 205(a) of this title for a conviction of a  
7 nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § ~~301~~  
8 201 shall report to probation and parole as directed by the court and begin to  
9 serve the sentence in the community immediately, unless the person is serving  
10 a prior sentence at the time.

11 Sec. 2. 13 V.S.A. § 7554 is amended to read:

12 § 7554. RELEASE PRIOR TO TRIAL

13 (a) Release; conditions of release. Any person charged with an offense,  
14 other than a person held without bail under section 7553 or 7553a of this title,  
15 shall at ~~his or her~~ the person's appearance before a judicial officer be ordered  
16 released pending trial in accordance with this section.

17 (1) The defendant shall be ordered released on personal recognizance or  
18 upon the execution of an unsecured appearance bond in an amount specified by  
19 the judicial officer unless the judicial officer determines that such a release will  
20 not reasonably mitigate the risk of flight from prosecution as required. In  
21 determining whether the defendant presents a risk of flight from prosecution,

1 the judicial officer shall consider, in addition to any other factors, the  
2 seriousness of the offense charged and the number of offenses with which the  
3 person is charged. If the officer determines that the defendant presents a risk  
4 of flight from prosecution, the officer shall, either in lieu of or in addition to  
5 the methods of release in this section, impose the least restrictive of the  
6 following conditions or the least restrictive combination of the following  
7 conditions that will reasonably mitigate the risk of flight of the defendant as  
8 required:

9 (A) Place the defendant in the custody of a designated person or  
10 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is  
11 charged with an offense that is not a nonviolent misdemeanor or nonviolent  
12 felony as defined in 28 V.S.A. § ~~301~~ 201.

13 \* \* \*

14 (2) If the judicial officer determines that conditions of release imposed  
15 to mitigate the risk of flight will not reasonably protect the public, the judicial  
16 officer may impose in addition the least restrictive of the following conditions  
17 or the least restrictive combination of the following conditions that will  
18 reasonably ensure protection of the public:

19 (A) Place the defendant in the custody of a designated person or  
20 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is

1 charged with an offense that is not a nonviolent misdemeanor or nonviolent  
2 felony as defined in 28 V.S.A. § ~~301~~ 201.

3 \* \* \*

4 Sec. 3. 28 V.S.A. § 201 is amended to read:

5 § 201. DEFINITIONS

6 ~~Whenever~~ As used in this chapter, ~~unless a different meaning plainly is~~  
7 ~~required, “probation”:~~

8 (1) “Nonviolent felony” means an offense that is not a listed crime as  
9 defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of  
10 children in violation of 13 V.S.A. chapter 64.

11 (2) “Nonviolent misdemeanor” means a misdemeanor offense that is not  
12 a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual  
13 exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A.  
14 § 1030.

15 (3) “Probation” means a procedure under which a respondent, found  
16 guilty of a crime upon verdict or plea, is released by the court, without  
17 confinement, subject to conditions imposed by the court and subject to the  
18 supervision of the Commissioner.

1 Sec. 4. 28 V.S.A. § 205 is amended to read:

2 § 205. PROBATION

3 (a)~~(1)~~ After passing sentence, a court may suspend all or part of the  
4 sentence and place the person so sentenced in the care and custody of the  
5 Commissioner upon such conditions and for such time as it may prescribe in  
6 accordance with law or until further order of court.

7 (1) There shall be a rebuttable presumption that the sentence is  
8 suspended, and the person is placed on probation, for first-time offenders  
9 adjudicated guilty of a nonviolent misdemeanor or a nonviolent felony unless  
10 the person voluntarily waives the presumption of probation.

11 ~~(2) The term of probation for misdemeanors shall be for a specific term~~  
12 ~~not to exceed two years unless the court, in its sole discretion, specifically~~  
13 ~~finds that the interests of justice require a longer or an indefinite period of~~  
14 ~~probation. The State may file a motion and present evidence requesting that an~~  
15 alternative sentence to presumptive probation is appropriate. The State shall  
16 have the burden of proof to rebut the presumption of probation by a  
17 preponderance of the evidence. The defendant shall have the right to respond  
18 to a motion filed pursuant to this subdivision and present evidence in support  
19 of presumptive probation. The court may hold a hearing on the motion at its  
20 discretion. In considering whether an alternative sentence is appropriate, the  
21 court shall consider relevant factors, including:

1           (A) whether the offense was committed with the use of a dangerous  
2 weapon;

3           (B) whether the person used threats or coercion in the commission of  
4 the offense; and

5           (C) the age and vulnerability of the victim, whether the person was in  
6 a position of responsibility or trust over the victim, or whether the individual  
7 abused a public position of responsibility or trust.

8           ~~(3)(A) The term of probation for nonviolent felonies shall not exceed~~  
9 ~~four years or the statutory maximum term of imprisonment for the offense,~~  
10 ~~whichever is less, unless the court, in its sole discretion, specifically finds that~~  
11 ~~the interests of justice require a longer or an indefinite period of probation. If~~  
12 ~~the State meets its burden, the court shall issue a written order specifying an~~  
13 ~~appropriate alternative sentence pursuant to 13 V.S.A. § 7030. The court shall~~  
14 ~~state the reasons for the alternative sentence in its order. Referral to a~~  
15 ~~community reparative board pursuant to 13 V.S.A. § 7030(2), on its own, shall~~  
16 ~~not be considered a sufficient alternative sentence to presumptive probation.~~

17           ~~(B) As used in this subdivision, “nonviolent felonies” means an~~  
18 ~~offense that is not:~~

19                   ~~(i) a listed crime as defined in 13 V.S.A. § 5301(7); or~~

20                   ~~(ii) an offense involving sexual exploitation of children in~~

21 ~~violation of 13 V.S.A. chapter 64. A decision of the Superior Court under this~~

1 subdivision may be appealed as a matter of right to the Supreme Court. The  
2 court's order shall not be stayed pending appeal unless the person subject to  
3 probation is reasonably likely to prevail on appeal.

4 ~~(4) Nothing in this subsection shall prevent the court from terminating~~  
5 ~~the period of probation and discharging a person pursuant to section 251 of this~~  
6 ~~title. The term of probation for misdemeanors shall be for a specific term not~~  
7 ~~to exceed two years unless the court, in its sole discretion, specifically finds~~  
8 ~~that the interests of justice require a longer or an indefinite period of probation.~~

9 ~~(5) The probation officer of a person on probation for a specific term~~  
10 ~~shall review the person's case file during probation and, not less than 45 days~~  
11 ~~prior to the expiration of the probation term, may file a petition with the court~~  
12 ~~requesting the court to extend the period of probation for a specific term not to~~  
13 ~~exceed one year in order to provide the person the opportunity to complete~~  
14 ~~programming consistent with special conditions of probation. A hearing on the~~  
15 ~~petition for an extension of probation under this subsection shall comply with~~  
16 ~~the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal~~  
17 ~~Procedure. The term of probation for nonviolent felonies shall not exceed four~~  
18 ~~years or the statutory maximum term of imprisonment for the offense,~~  
19 ~~whichever is less, unless the court, in its sole discretion, specifically finds that~~  
20 ~~the interests of justice require a longer or an indefinite period of probation.~~





1 court shall release a probationer who is on probation for a nonviolent  
2 misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554.

3 ~~(B) As used in this section:~~

4 ~~(i) “Nonviolent felony” means a felony offense that is not a listed~~  
5 ~~crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual~~  
6 ~~exploitation of children in violation of 13 V.S.A. chapter 64.~~

7 ~~(ii) “Nonviolent misdemeanor” means a misdemeanor offense that~~  
8 ~~is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving~~  
9 ~~sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13~~  
10 ~~V.S.A. § 1030.~~

11 Sec. 5. EFFECTIVE DATE

12 This act shall take effect on July 1, 2023.