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S.155

Introduced by Senators Vyhovsky, Gulick and Watson

Referred to Committee on

Date:

Subject: Criminal procedure; sentencing; life without parole

Statement of purpose of bill as introduced: This bill proposes to eliminate life without parole as a sentencing option, to prohibit consecutive sentencing for persons who were 25 years of age or younger at the time they committed the offenses, and to make all persons eligible for second look sentencing review.

An act relating to eliminating life without parole and implementing second look sentencing

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

Sec. 1. 13 V.S.A. § 2303 is amended to read:

§ 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

(a)(1) The punishment for murder in the first degree shall be imprisonment

for:

~~(A)~~ a minimum term of not less than 35 years and a maximum term

of life; ~~or~~

~~(B) life without the possibility of parole.~~

1 (2) The punishment for murder in the second degree shall be
2 imprisonment for:

3 ~~(A) a minimum term of not less than 20 years and a maximum term~~
4 ~~of life; or~~

5 ~~(B) life without the possibility of parole.~~

6 ~~(3) Notwithstanding any other provision of law, this subsection shall~~
7 ~~apply only if the murder was committed on or after the effective date of this~~
8 ~~act.~~

9 (b) The punishment for murder in the first degree shall be imprisonment for
10 life and for a minimum term of 35 years unless a jury finds that there are
11 aggravating or mitigating factors ~~which~~ that justify a different minimum term.
12 If the jury finds that the aggravating factors outweigh any mitigating factors,
13 the court may set a minimum term longer than 35 years, up to and including
14 imprisonment for life without parole. If the jury finds that the mitigating
15 factors outweigh any aggravating factors, the court may set a minimum term at
16 less than 35 years but not less than 15 years.

17 (c) The punishment for murder in the second degree shall be imprisonment
18 for life and for a minimum term of 20 years unless a jury finds that there are
19 aggravating or mitigating factors ~~which~~ that justify a different minimum term.
20 If the jury finds that the aggravating factors outweigh any mitigating factors,
21 the court may set a minimum term longer than 20 years, up to and including

1 imprisonment for life without parole. If the jury finds that the mitigating
2 factors outweigh any aggravating factors, the court may set a minimum term at
3 less than 20 years but not less than 10 years.

4 * * *

5 (g) Subsections (b)–(f) of this section shall apply only if the murder was
6 committed before ~~the effective date of this act~~ May 1, 2006, and:

7 (1) the defendant was not sentenced before ~~the effective date of this act~~
8 May 1, 2006; or

9 (2) the defendant’s sentence was stricken and remanded for resentencing
10 pursuant to the Vermont Supreme Court’s decision in State v. Provost, 2005
11 VT 134.

12 Sec. 2. 13 V.S.A. § 2311 is amended to read:

13 § 2311. AGGRAVATED MURDER DEFINED

14 (a) A person is guilty of aggravated murder if ~~he or she~~ the person commits
15 a first or second degree murder, as defined in section 2301 of this title, and at
16 the time of ~~his or her~~ the person’s actions, one or more of the following
17 circumstances was in fact present:

18 (1) The murder was committed while the defendant was in custody
19 under sentence for murder or aggravated murder.

1 (2) The defendant had, prior to commencement of the trial for
2 aggravated murder, been convicted of another aggravated murder or murder in
3 any jurisdiction in the United States and territories.

4 (3) At the time of the murder, the defendant also committed another
5 murder.

6 (4) At the time of the murder, the defendant knowingly created a great
7 risk of death to another person or persons.

8 (5) The murder was committed for the purpose of avoiding or
9 preventing lawful arrest by a law enforcement officer of any person, or
10 effecting an escape by any person from lawful custody of a law enforcement
11 officer.

12 (6) The murder was committed by a person hired for such purpose in
13 return for anything of value. Both the person hired and the person hiring ~~him~~
14 ~~or her~~ that person are guilty of aggravated murder.

15 (7) The victim of the murder was known by the person to be a
16 firefighter, a member of emergency medical personnel as defined in 24 V.S.A.
17 § 2651(6), a person employed in any capacity in or about a correctional
18 facility, or a law enforcement officer, and was performing ~~his or her~~ the
19 victim's official duties.

20 (8) The murder was committed in perpetrating or attempting to
21 perpetrate sexual assault or aggravated sexual assault.

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(c) The punishment for aggravated murder shall be imprisonment for life with the possibility of parole and for no lesser term. ~~The~~ Except as provided for in this section, the court shall not place on probation or suspend or defer the sentence of any person convicted of aggravated murder. A person sentenced under this section shall ~~not~~ be eligible for parole ~~during the term of imprisonment imposed herein and shall not be eligible for work-release or noncustodial furlough except when serious medical services make custodial furlough inappropriate~~ after serving 25 years of the sentence.

Sec. 3. 13 V.S.A. § 7032 is amended to read:

§ 7032. CONSECUTIVE SENTENCES

(a) If a person who has been sentenced to a term or terms of imprisonment is convicted of another offense punishable by imprisonment before ~~he or she~~ the person has been discharged from the former sentence or sentences, the court may sentence ~~him or her~~ the person to an additional term of imprisonment and shall specify whether this additional term shall be served concurrent with or consecutive to the prior sentence or sentences.

(b) In any case where a person is convicted of two or more offenses punishable by imprisonment and is sentenced for more than one of these offenses, ~~he or she~~ the person may be sentenced to as many terms as there are offenses of which ~~he or she~~ the person is convicted. ~~When~~ Subject to the

1 limitation set forth in subsection (d) of this section, when such multiple
2 sentences are imposed they shall run concurrent with or consecutive to each
3 other as the court determines at the time of sentencing and each shall run from
4 its respective date of commitment after sentence. When such multiple
5 sentences are in addition to a prior sentence or sentences from which the
6 person has not yet been discharged, they shall run concurrently with or
7 consecutive to any prior sentence or sentences as the court shall determine at
8 the time of sentencing.

9 * * *

10 (d) When multiple sentences are imposed pursuant to this section on a
11 person who was 25 years of age or younger at the time of the commission of
12 the offenses, the sentences shall run concurrent with each other.

13 Sec. 4. 13 V.S.A. § 7045 is amended to read:

14 § 7045. LIFE WITHOUT PAROLE SENTENCE PROHIBITED FOR
15 ~~PERSONS UNDER 18 YEARS OF AGE~~

16 A court shall not sentence a person to life imprisonment without the
17 possibility of parole ~~if the person was under 18 years of age at the time of the~~
18 ~~commission of the offense.~~

19 Sec. 5. 13 V.S.A. § 7046 is added to read:

20 § 7046. SECOND LOOK SENTENCING

21 (a) Short title. This section may be cited as the “Second Look Act.”

1 (b) Definitions.

2 (1) “Authorized representative” means the incarcerated person’s
3 counsel, family member, or a licensed healthcare professional.

4 (2) “Developmental disability” has the same meaning as in 18 V.S.A.
5 § 9302.

6 (3) “Family member” has the same meaning as in section 5301(2) of this
7 title.

8 (4) “Intellectual disability” has the same meaning as in 1 V.S.A. § 146.

9 (5) “Mental illness” has the same meaning as in 18 V.S.A. § 7101(14).

10 (6) “Successor judge” means the current judge presiding in the judicial
11 unit where the original sentence was imposed if the original sentencing judge
12 is unavailable.

13 (7) “Victim” has the same meaning as in section 5301(4) of this title.

14 (c) Eligibility.

15 (1) An incarcerated person may petition the judge who presided when
16 the original sentence was imposed for a reduction of the person’s sentence if
17 the person has served the lesser of:

18 (A) 10 years in custody of the Department of Corrections; or

19 (B) at least 50 percent of person’s sentence, provided the person was
20 sentenced to at least five years of incarceration.

1 (2) Notwithstanding any other provision of law to the contrary, an
2 otherwise ineligible incarcerated person shall be deemed eligible to petition for
3 a reduction in sentence upon consent of the prosecutor, regardless of person's
4 number of years in custody.

5 (3) Except as otherwise provided in this subsection, if a petition for a
6 reduction in sentence filed pursuant to this section has been denied, the
7 incarcerated person or an authorized representative shall not file another
8 petition until at least two years have elapsed after the date the preceding
9 petition was denied. A court may require a waiting period longer than two
10 years, but in no event shall the waiting period be more than five years after the
11 date the preceding petition was denied.

12 (4) When a petition for a reduction in sentence made pursuant to this
13 section has been granted and the total term of incarceration was reduced by at
14 least 25 percent, the incarcerated person or an authorized representative shall
15 not file a petition for a second sentencing reduction until at least five years
16 have elapsed after the date the preceding petition was granted.

17 (d) Procedure; petition.

18 (1) After a person has served 40 percent of the person's sentence in
19 custody, the Department of Corrections shall, within 30 days, give written
20 notice of this section to the incarcerated person and to the person's counsel or,
21 if the person is unrepresented, to the Office of the Defender General. The

1 Department shall also give written notice of this section to the incarcerated
2 person and to the person's counsel or, if the person is unrepresented, to the
3 Office of the Defender General, within 30 days after serving nine years and
4 seven months in custody.

5 (2) A petition for a sentence reduction pursuant to this section may be
6 filed six months prior to the date upon which a person becomes eligible for a
7 reduction in sentence pursuant to subsection (b) of this section.

8 (3) The petition shall be filed by the incarcerated person, a prosecutor,
9 or by an authorized representative. A petition filed by an authorized
10 representative shall be accompanied by an affidavit stating:

11 (A) the reason that the incarcerated person is unable to file the
12 petition;

13 (B) a factual statement explaining the petitioner's relationship to the
14 incarcerated person; and

15 (C) how the authorized representative is acting in the best interests of
16 the incarcerated person.

17 (4) The petition must be filed in writing in the Superior Court in which
18 the original sentence was imposed and may include affidavits, declarations,
19 letters, prison records, or other relevant written and electronic material. The
20 petition shall include the following:

21 (A) the name of the petitioner;

1 (B) the name of the incarcerated person if different than the
2 petitioner;

3 (C) any docket number relevant to the petitioner’s resentencing
4 request;

5 (D) the name of the judge assigned to any docket number relevant to
6 the petitioner’s resentencing request;

7 (E) the offense and specific counts for which the incarcerated person
8 was convicted relating to the resentencing request;

9 (F) the current term of incarceration being served by the incarcerated
10 person relating to the resentencing request; and

11 (G) a factual statement explaining how the incarcerated person meets
12 the eligibility requirements described in subsection (c) of this section.

13 (e) Hearings.

14 (1) Upon the court’s receipt of a petition filed pursuant to this section,
15 the court shall, within 30 days, provide the prosecutor, the petitioner, and the
16 incarcerated person if not the petitioner with a copy of the petition, including
17 any attached material.

18 (2) A petition made pursuant to this section shall be referred to the judge
19 who presided over the imposition of the original sentence upon the petitioner.
20 If, at the time of the petition to the court, the original sentencing judge is no
21 longer available, then the petition shall be assigned to the successor judge.

1 (3) Upon receiving the petition, the court shall determine whether the
2 incarcerated person has served at least 10 years in custody of the Department
3 of Corrections or at least 50 percent of the person’s sentence, provided that the
4 person was sentenced to at least five years of incarceration. If the court
5 determines that the incarcerated person has met the requirements of this
6 subdivision, or if the prosecutor otherwise consents, the court shall set a
7 hearing.

8 (4) Unless the court finds good cause to hold the hearing at a later date
9 or at the request of the petitioner, the court shall set the hearing not more than
10 45 days after the date the petition is filed with the court if one or more of the
11 following circumstances are met:

12 (A) The incarcerated person has one or more medical conditions
13 leading to major limitations in activities of daily living, including mental
14 illness or an intellectual or developmental disability.

15 (B) The incarcerated person has one or more medical conditions
16 increasing the likelihood of contracting an illness or disease while incarcerated
17 that could lead to death or cause the person to develop a medical condition that
18 could prevent the performance of one or more activities of daily living without
19 assistance. These conditions include any condition related to a weakened
20 immune system, including human immunodeficiency virus (HIV) or acquired
21 immune deficiency syndrome (AIDS); debilitating health conditions that occur

1 as a result of dementia, Alzheimer’s disease, or similar degenerative brain
2 disorders; cardiovascular disease; chronic lung disease or asthma; diabetes;
3 hepatitis C; seizure disorders; the need for life-sustaining care such as feeding
4 tubes or colostomy bags; disabling neurological disorders such as multiple
5 sclerosis (MS) or amyotrophic lateral sclerosis (ALS); or any condition that
6 requires or is expected to require specialty care or recurrent hospitalizations.

7 (C) The petition is filed by a prosecutor.

8 (5) If the petition does not meet the criteria of subdivision (e)(4) of this
9 section, unless the court finds good cause to hold the hearing at a later date or
10 at the request of the petitioner, the court shall set the hearing date not more
11 than:

12 (A) 90 days after the date the petition is filed upon a finding that the
13 incarcerated person has served over 20 years of the person’s sentence and is
14 over 55 years of age; or

15 (B) 180 days after the date the petition is filed upon a finding that the
16 incarcerated person does not meet the criteria of subdivisions (4) and (5)(A) of
17 this subsection (e).

18 (6) If the court determines that the petitioner has not met the
19 requirements pursuant to subdivisions (4) and (5) of this subsection (e) and the
20 prosecutor does not consent, the court shall enter an order denying the petition
21 and shall provide a copy of the order to the petitioner and, if the incarcerated

1 person is not the petitioner, to the incarcerated person. The petitioner or
2 incarcerated person may appeal this denial pursuant to subsection (i) of this
3 section.

4 (7) Upon setting a hearing, the court shall appoint counsel pursuant to
5 chapter 163 of this title, if necessary. The court may direct the parties to
6 supplement the record by submitting additional materials relating to the
7 petition, if necessary. A petition filed under this section may be freely
8 amended at any time prior to the hearing.

9 (8) Upon a determination that the petition establishes eligibility pursuant
10 to subdivision (c) of this section and the petition is assigned to a successor
11 judge, the court shall not reconsider the sufficiency of the petition or decline to
12 set a hearing.

13 (9) When the court sets a resentencing hearing pursuant to this
14 subsection, the court shall notify the petitioner, the incarcerated person if
15 different than the petitioner, the Department of Corrections, and the prosecutor
16 of the hearing date.

17 (10) At a hearing pursuant to this subsection, the court may allow the
18 parties to present any evidence that is relevant to the issue of a reduction in
19 sentencing. Relevant evidence includes documents, testimony, tangible
20 objects, or any other information germane to sentencing.

1 (11) At a hearing under this section, the incarcerated person shall be
2 present unless the person waives the right to be present. The incarcerated
3 person shall have the right to testify or to remain silent at the person's sole
4 discretion. The incarcerated person shall be considered present for the
5 purposes of the hearing if appearing by video teleconference upon consent of
6 the parties.

7 (12) Any hearing under this section shall be recorded or transcribed.

8 (f) Grounds for sentence modification.

9 (1) The court shall consider any evidence that is relevant to the issue of
10 a reduction in sentencing, including:

11 (A) the history and characteristics of the incarcerated person at the
12 time of the petition for a reduction in sentence, including rehabilitation
13 demonstrated by the incarcerated person, the incarcerated person's disciplinary
14 record while incarcerated, and the incarcerated person's efforts to participate in
15 educational, therapeutic, and vocational opportunities while imprisoned;

16 (B) the age of the incarcerated person at the time of the offense and
17 research regarding child, adolescent, and young adult brain development that
18 meets evidentiary standards under the Vermont Rules of Evidence;

19 (C) the age of the incarcerated person at the time of the sentence
20 modification petition and research regarding desistance that meets evidentiary
21 standards under the Vermont Rules of Evidence;

1 (D) the nature of the incarcerated person’s offense, including
2 changing societal attitudes regarding the propriety of criminalizing the offense
3 and the appropriate sentence for the offense;

4 (E) the circumstances surrounding the incarcerated person’s offense,
5 including the person’s role in its commission, whether the person was under
6 the influence of another person, and the proportionality of the person’s
7 sentence compared to that received by other parties to the offense;

8 (F) the circumstances of the incarcerated person’s incarceration,
9 including the person’s conditions of confinement, the impact of the person’s
10 incarceration on the community, and any evidence that the person was
11 subjected to physical, sexual, or psychological abuse while incarcerated;

12 (G) information concerning the incarcerated person’s current
13 physical or mental health and the person’s physical or mental health at the time
14 of the offense;

15 (H) information that the incarcerated person was denied effective
16 assistance of counsel at any stage in the case leading to the original sentence,
17 including the ineffective assistance of counsel during plea bargaining;

18 (I) information that the incarcerated person was wrongfully
19 convicted;

1 (J) information that the incarcerated person was subjected to human
2 trafficking and that such victimization was a contributing factor to the person's
3 criminal behavior;

4 (K) information that the incarcerated person was subjected to
5 physical, sexual, or psychological abuse by an intimate partner or a family or
6 household member and that such victimization was a contributing factor to the
7 person's criminal behavior; or

8 (L) any other information the court deems relevant.

9 (2) The court shall set forth, either in open court on the day of the
10 hearing or in writing within 30 days after the hearing, the reasons for granting
11 or denying a petition under this section.

12 (g) Sentence modification.

13 (1) In calculating the new term to be served by the incarcerated person,
14 the court may consider a calculation of the shortest and longest lengths of time
15 the person may be incarcerated under the individual's existing sentence, taking
16 into account the effect for time served as ordered by the court pursuant to
17 section 7031 of this title, the provisions for reductions of term pursuant to 28
18 V.S.A. § 811, and the provisions for earned time pursuant to 28 V.S.A. § 818.
19 The court may request these calculations from the Commissioner of
20 Corrections.

1 (2) Upon the court’s determination that the incarcerated person meets
2 the criteria pursuant to subdivision (e)(4)(A) of this section, there shall be a
3 rebuttable presumption that the person’s sentence shall be reduced to time
4 served.

5 (3) Upon the court’s determination that the incarcerated person does not
6 pose a significant risk to the community, there shall be a rebuttable
7 presumption that the person’s sentence shall be reduced by at least 20 percent
8 or reduced to a period not longer than five years of incarceration from the date
9 of the filing of the petition, whichever results in a shorter term of incarceration.

10 (4) If the prosecutor is the petitioner, the new term of incarceration to be
11 served by the incarcerated person shall not be lengthier than the
12 recommendation of the petitioner but may be shorter.

13 (5) A court’s order granting an incarcerated person’s sentence
14 modification shall be limited to the imposition of:

15 (A) time served;

16 (B) immediate parole;

17 (C) sentencing alternatives pursuant to section 7030 of this title;

18 (D) a lower minimum term of incarceration; or

19 (E) a lower maximum term of incarceration.

1 (6) Nothing in this section shall be construed to permit the court to
2 impose a sentence of life without parole or an increase to the incarcerated
3 person's sentence in any circumstance.

4 (h) Victim's rights.

5 (1) Upon receipt of a petition filed pursuant to this section, the
6 prosecutor shall promptly notify any victim of the incarcerated person of the
7 hearing date once it is scheduled.

8 (2) The victim has the right to appear and the right to make a statement,
9 oral or written, at the sentencing of the incarcerated person regarding the
10 victim's view of the crime, the person convicted, and the sentence.

11 (3) The court shall not, in modifying a sentence, disturb any restitution
12 awarded to a victim at the original sentencing.

13 (i) Appeal.

14 (1) Any party to a petition filed pursuant to this section shall have the
15 right to appeal to the Supreme Court on the grounds that the sentence
16 modification or its imposition is unlawful. The petitioner or incarcerated
17 person shall also have the right to appeal to the Supreme Court on the ground
18 that the sentence is otherwise contrary to considerations of sentencing pursuant
19 to section 7030 of this title. The petitioner or incarcerated person may also
20 appeal on the ground that the petitioner's request for a hearing was unlawfully
21 denied.

1 (2) The right to appeal a sentence modification pursuant to this
2 subsection shall be as of right on the same terms as a first appeal from an
3 initial sentence at the time of conviction.

4 (j) Construction.

5 (1) Nothing in this section shall not be construed to abridge or modify
6 any existing remedy an incarcerated person may have pursuant to chapter 221,
7 subchapter 2 of this title, habeas corpus, other statutory or judicial
8 postconviction relief, or any other legal framework.

9 (2) A petition filed pursuant to this section shall not impact in any way
10 or be impacted in any way by any pending petitions pursuant to chapter 221,
11 subchapter 2 of this title, habeas corpus, or other postconviction proceedings,
12 nor shall the denial of a petition filed pursuant to this section preclude these
13 remedies from being pursued or granted.

14 Sec. 6. APPLICABILITY

15 (a) Notwithstanding 1 V.S.A. § 214, Sec. 1 of this act shall apply to
16 sentences imposed before May 1, 2006.

17 (b) Notwithstanding 1 V.S.A. § 214, Secs. 2 through 5 of this act shall
18 apply to sentences imposed prior to the effective date of this act.

19 Sec. 7. EFFECTIVE DATE

20 This act shall take effect on July 1, 2024.