

S.140

Introduced by Senators Vyhovsky, Gulick, Ram Hinsdale and Watson

Referred to Committee on

Date:

Subject: Criminal procedure; sentencing; life without parole; second look

Statement of purpose of bill as introduced: This bill proposes to implement a second look sentencing review for individuals who have served not less than 10 years of an incarcerative sentence or not less than half of an incarcerative sentence of at least five years, whichever is shorter. This bill also proposes to create a judicial procedure for the early release of offenders who have a terminal, incurable, or debilitating medical condition or who are not less than 65 years of age, have serious medical needs, and are not a danger to the public.

An act relating to implementing second look sentencing and compassionate release

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

Sec. 1. 13 V.S.A. § 7046 is added to read:

§ 7046. SECOND LOOK SENTENCING

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

(b) Definitions. As used in this section:

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

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

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

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

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

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

12 (7) “Victim” has the same meaning as in subdivision 5301(4) of this
13 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 the
4 person's 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 (c) of this section.

8 (3) The petition shall be filed by the incarcerated person, a prosecutor,
9 or 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 (4) of this
9 subsection, unless the court finds good cause to hold the hearing at a later date
10 or 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 be construed to abridge or modify any
6 existing remedy an incarcerated person may have pursuant to subchapter 2 of
7 this chapter; habeas corpus; other statutory or judicial postconviction relief; or
8 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 subchapter 2
11 of this chapter; habeas corpus; or other postconviction proceedings, nor shall
12 the denial of a petition filed pursuant to this section preclude these remedies
13 from being pursued or granted.

14 Sec. 2. 13 V.S.A. chapter 221, subchapter 5 is added to read:

15 Subchapter 5. Petition for Compassionate Release

16 § 7141. PETITION

17 An offender who is serving a sentence of incarceration in the custody of the
18 Commissioner of Corrections may petition the Superior Court of the county
19 where the sentence was imposed for an order granting compassionate release.
20 The petition may be informal but shall be in writing and shall include the
21 offender's name, offense, date of sentencing, sentence, and an explanation of

1 why compassionate release is appropriate for the offender and how the
2 offender satisfies the factors set forth in section 7142 of this subchapter. The
3 offender shall serve a copy of the offender's petition upon the superintendent
4 of the facility in which the offender is incarcerated.

5 § 7142. NOTICE, HEARING, AND DECISION

6 (a) Unless the petition and the files and records of the case conclusively
7 show that the offender is not entitled to relief, the court shall cause notice to be
8 served upon the Office of the Attorney General and the State's Attorney. The
9 Office of the Attorney General and a State's Attorney who receive notice may
10 elect to appear as parties.

11 (b) The court may decide the petition upon the files and records of the case
12 or may grant a hearing. If the court grants a hearing, the court may entertain
13 and decide the petition without requiring the offender to attend the hearing.

14 (c) The court shall grant the petition if it finds by a preponderance of the
15 evidence that:

16 (1) the offender:

17 (A) has been diagnosed with a terminal, incurable disease and has a
18 life expectancy of 18 months or less;

19 (B) has been diagnosed with an incurable and progressive illness or
20 has suffered a debilitating injury and:

21 (i) cannot provide self-care and is confined to a bed or chair; or

1 (ii) can only provide limited self-care and is confined to a bed or
2 chair for at least 50 percent of the inmate's waking hours; or

3 (C) is 65 years of age or older and:

4 (i) suffers from a chronic or serious medical condition; or

5 (ii) is experiencing deteriorating mental or physical health that
6 diminishes the inmate's ability to function in a correctional facility;

7 (2) the offender is not a danger to the community and the offender's
8 release will not endanger public safety; and

9 (3) compassionate release is appropriate.

10 (d) If the court grants the petition, it may reduce the term of imprisonment
11 and may impose a term of probation or supervised release with or without
12 conditions that does not exceed the original term of imprisonment.

13 § 7143. APPEALS

14 An appeal may be taken to the Supreme Court from the order entered on the
15 petition.

16 § 7144. ASSIGNMENT OF COUNSEL

17 The court may appoint counsel if, financially, the offender is unable to
18 employ counsel, and may order that all necessary costs and expenses, including
19 court costs, stenographic services, printing, and reasonable compensation for
20 legal services, be paid by the State from the appropriation to the court where

1 the sentence was imposed. On appeal, the Supreme Court may make a similar
2 order.

3 Sec. 3. 28 V.S.A. § 501 is amended to read:

4 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

5 (a) An ~~inmate~~ offender who is serving a sentence of imprisonment who is
6 not eligible for presumptive parole pursuant to section 501a of this title shall be
7 eligible for parole ~~consideration~~ as follows:

8 (1) If the ~~inmate's~~ offender's sentence has no minimum term or a zero
9 minimum term, the ~~inmate~~ offender shall be eligible for parole consideration
10 within 12 months after commitment to a correctional facility.

11 (2) If the ~~inmate's~~ offender's sentence has a minimum term, the ~~inmate~~
12 offender shall be ~~eligible for parole consideration~~ paroled after the ~~inmate~~
13 offender has served the minimum term of the sentence unless the offender has
14 programming requirements that have not been fulfilled or has received a major
15 disciplinary report within the previous 12 months.

16 (3) If the offender has a serious medical condition that requires regular
17 hospital visits and the inmate is designated low-risk, the offender shall be
18 eligible for parole.

19 (4) If the offender is 55 years of age or older but under 65 years of age,
20 is designated low-risk, and has served 10 years but not served the minimum of
21 the sentence, the offender shall be paroled, unless the offender has

1 programming requirements that have not been fulfilled or has received a major
2 disciplinary report within the previous 12 months.

3 (5) If the offender is 65 years of age or older, has served five years but
4 not served the minimum term of the sentence, and is designated low-risk, the
5 offender shall be paroled, unless the offender has programming requirements
6 that have not been fulfilled or has received a major disciplinary report within
7 the previous 12 months.

8 (b) For purposes of this section, “major disciplinary report” includes
9 violations for violent acts or serious threats to institutional security or personal
10 safety and does not include drug possession.

11 Sec. 4. APPLICABILITY

12 Notwithstanding 1 V.S.A. § 214, Sec. 1 of this act shall apply to sentences
13 imposed prior to the effective date of this act.

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on July 1, 2025.