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TO: Joint Legislative Justice Oversight Committee

FROM: Hon. Thomas A. Zonay, Chair  
Vermont Sentencing Commission

RE: Sentencing Commission Report pursuant to Act No. 24, Sec 6 of 2021, *An Act Relating to Earned Discharge from Probation*

DATE: September 27, 2021

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### Executive Summary

The Vermont Sentencing Commission does not, at this time, recommend limiting the duration of probation for misdemeanor offenses to two years, but does recommend that the issue be evaluated in two years after sufficient data and information is developed to determine the impact of recent statutory enactments.

### Findings & Recommendations

Section 6 of Act No. 24 of 2021 requires the Vermont Sentencing Commission to issue a recommendation on the following question to the Joint Legislative Justice Oversight Committee:

During the 2021 legislative interim, the Vermont Sentencing Commission shall review 28 V.S.A. § 205 and the December 3, 2020 report of the Pew Charitable Trusts, “States Can Shorten Probation and Protect Public Safety,” and consider whether Vermont should limit the duration of probation terms for misdemeanor offenses to two years. On or before October 1, 2021, the Commission shall issue its recommendation pursuant to this section to the Joint Legislative Justice Oversight Committee.

Title 28 V.S.A. § 205, Probation, contains the statutory guidance for length of probation in Vermont. It provides, in pertinent part, that:

(2) The term of probation for misdemeanors shall be for a specific term not to exceed two years unless the court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

The Commission does not, at this time, recommend changing the statute to provide for a maximum term of probation of two years for all misdemeanors in all cases. In support of its

position the Commission notes that the existing statute already contains a two-year maximum which may only be exceeded in limited circumstances where a Court concludes that it is warranted “in the interests of justice.” The Commission is not aware that the interests of justice exception is used on a frequent enough basis in misdemeanors such that a significant number of defendants are under supervision beyond two years.

The Commission observes that the use of the interests of justice exception to provide a longer or indefinite term can be used by the parties in particular cases as a means of resolving a case and providing for public safety and/or correctional treatment for a longer period of time. It can also be an integral part of an agreement between the parties that results in a felony charge being amended to a misdemeanor. Thus, removing the exception would potentially have the unintended consequence of frustrating case resolution and subjecting individuals to longer periods of supervision under the felony probation provisions of 28 V.S.A. § 205.

The Commission observes that in its Report, the Pew Trust discussed that many people serve longer probationary terms than necessary for public safety, and that few states have statutes which provide for early release. It also identifies, *inter alia*, that probationary structures which implement goal-based, instead of time-based, supervision, and which provide for periodic review, can shorten probation terms, lower recidivism rates, and bolster public safety.

Notably, the structure of Vermont’s current probationary system already addresses such concerns. In this regard, Vermont statutes already recognize that the goal of probation is to rehabilitate offenders and expressly provide for early termination. See 28 V.S.A. §§ 200 (“the purpose of probation is to rehabilitate offenders, reduce the risk that they will commit a subsequent offense, and protect the safety of the victim and the community”) and 251 (Court may discharge an individual from probation person “at any time if such termination is warranted by the conduct of the offender and the ends of justice.”). Additionally, under Act 24 which became effective July 1, 2021, the Legislature adopted mid-point review for probation cases. This statute serves as an additional mechanism to provide for early discharge when appropriate. As such, in Vermont, unlike a number of other jurisdictions, there is a mechanism to terminate terms of probation which may have been imposed in misdemeanors under the interest of justice exception when appropriate.

Finally, the Commission observes that the Pew Report sets forth data from 2018 as to the estimated average term of probation by State. See Figure 1, page 4. Notably, the Pew Report determined that Vermont’s average length for that year was 18.6 months and that the State was in the lower quarter for length of terms among the states. See Table 2, page 16. While the Pew Report noted only a 4% reduction in the length of probation since 2000, this length may well be reduced further given Act 24 and the mid-point review enactment. See Table A.1, page 24. Data and information relevant to assessing the full impact of this enactment should be collected and reviewed regularly to ensure that the purposes of probation are being served.

## Conclusion

The Commission does not, at this time, recommend limiting the duration of probation for misdemeanor offenses to two years. Rather, the Commission believes that gathering data and information on the impact of the recent enactment and reviewing the issue regularly and within two years of the effective date of Act 24, would best serve the purposes of sentencing and provide the Commission with the necessary data and information to recommend any additional statutory changes which may be appropriate.