

1 S.41

2 Introduced by Senators Ram Hinsdale, Gulick, Hardy, Perchlik, Vyhovsky,
3 Watson and White

4 Referred to Committee on

5 Date:

6 Subject: Criminal procedure; sentencing; life without parole

7 Statement of purpose of bill as introduced: This bill proposes to eliminate life
8 without parole as a sentencing option and to prohibit consecutive sentencing
9 for individuals who were 25 years of age or younger at the time they
10 committed the offenses.

11 An act relating to eliminating life without parole

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

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

14 § 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

15 (a) Except as provided in subsection (g) of this section:

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

17 for:

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

19 of life; ~~or~~

20 ~~(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 life ~~without parole~~ imprisonment. If the jury finds that the mitigating factors
15 outweigh any aggravating factors, the court may set a minimum term at less
16 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 life ~~without parole~~ imprisonment. If the jury finds that the mitigating factors
2 outweigh any aggravating factors, the court may set a minimum term at less
3 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 (2005).

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.

1 (b) In a prosecution for aggravated murder, the State shall allege and prove
2 beyond a reasonable doubt one or more of the circumstances enumerated in
3 subsection (a) of this section.

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

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

13 § 7032. CONSECUTIVE SENTENCES

14 (a) If a person who has been sentenced to a term or terms of imprisonment
15 is convicted of another offense punishable by imprisonment before ~~he or she~~
16 the person has been discharged from the former sentence or sentences, the
17 court may sentence ~~him or her~~ the person to an additional term of
18 imprisonment and shall specify whether this additional term shall be served
19 concurrent with or consecutive to the prior sentence or sentences, subject to the
20 limitations set forth in subsection (d) of this section.

1 (b) In any case where a person is convicted of two or more offenses
2 punishable by imprisonment and is sentenced for more than one of these
3 offenses, ~~he or she~~ the person may be sentenced to as many terms as there are
4 offenses of which ~~he or she~~ the person is convicted. ~~When~~ Subject to the
5 limitation set forth in subsection (d) of this section, when such multiple
6 sentences are imposed, they shall run concurrent with or consecutive to each
7 other as the court determines at the time of sentencing and each shall run from
8 its respective date of commitment after sentence. When such multiple
9 sentences are in addition to a prior sentence or sentences from which the
10 person has not yet been discharged, they shall run concurrently with or
11 consecutive to any prior sentence or sentences as the court shall determine at
12 the time of sentencing.

13 (c) In all cases where multiple or additional sentences have been or are
14 imposed, the term or terms of imprisonment under those sentences shall be
15 determined in accordance with the following definitions:

16 (1) When terms run concurrently, the shorter minimum terms merge in
17 and are satisfied by serving the longest minimum and the shorter maximum
18 terms merge in and are satisfied by discharge of the longest maximum term.

19 (2) When terms run consecutively, the minimum terms are added to
20 arrive at an aggregate minimum to be served equal to the sum of all minimum
21 terms and the maximum terms are added to arrive at an aggregate maximum

1 equal to the sum of all maximum terms. A person shall serve no more time on
2 consecutive minimum sentences than the sum of the minimum terms,
3 regardless of whether the sentences are imposed on the same or different dates.
4 If a person has served a minimum term and subsequently incurs another
5 criminal charge, the time the person spends in custody awaiting disposition of
6 the new charge shall count toward the minimum term of the new sentence, if
7 one is imposed. This subdivision shall not require the Department of
8 Corrections to release a person from incarceration to community supervision at
9 the person's minimum term.

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.~~

1 Sec. 5. 28 V.S.A. § 1 is amended to read:

2 § 1. PURPOSES

3 (a) The Department of Corrections created by 3 V.S.A. § 3081 shall have
4 the purpose of developing and administering a correctional program designed
5 to protect persons and property against offenders of the criminal law and to
6 render treatment to offenders with the goal of achieving their successful return
7 and participation as citizens of the State and community, to foster their human
8 dignity, and to preserve the human resources of the community.

9 (b) The Department shall formulate its programs and policies recognizing
10 that almost all criminal offenders ultimately return to the community, and that
11 the traditional institutional prisons fail to reform or rehabilitate, operating
12 instead to increase the risk of continued criminal acts following release. The
13 Department shall develop and implement a comprehensive program that will
14 provide necessary closed custodial confinement of frequent, dangerous
15 offenders, but that also will establish as its primary objective the disciplined
16 preparation of offenders for their responsible roles in the open community.
17 The Department shall ensure that the comprehensive program required by this
18 subsection includes a process by which each offender sentenced to any term of
19 imprisonment ~~other than for life without parole~~, within 30 days after receiving
20 ~~his or her~~ the offender's sentence, shall begin to develop and implement a plan
21 preparing for return to the community.

1 (c) In order to implement its programs and policies, the Department shall
2 develop and maintain correctional facilities that shall include both residence-
3 centered institutions and facilities reflecting nonresidence principles designed
4 to facilitate the reintegration of the offender into the community. These
5 facilities shall utilize the supporting resources of probation and parole
6 services; the increased cooperation of personnel in the fields of welfare,
7 health, and education; and the increased participation of the citizens of the
8 State in attempts to achieve correctional purposes and objectives.

9 Sec. 6. 28 V.S.A. § 501 is amended to read:

10 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

11 An inmate who is serving a sentence of imprisonment who is not eligible
12 for presumptive parole pursuant to section 501a of this title shall be eligible for
13 parole consideration as follows:

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

17 (2) If the inmate's sentence has a minimum term, the inmate shall be
18 eligible for parole consideration after the inmate has served the minimum term
19 of the sentence.

1 (3) An inmate serving a sentence of life without parole on or after
2 July 1, 2023 or an inmate serving a sentence of life imprisonment shall be
3 eligible for parole consideration during the inmate's 25th year of incarceration.

4 Sec. 7. EFFECTIVE DATE

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