

ACT 61 CRIMINAL CODE RECLASSIFICATION FINAL REPORT

JULY 2015



SUBMITTED TO:
The Vermont General Assembly

SUBMITTED BY:
Act 61 Working Group
David Cahill, Esq.
Judge Walter Morris
John Treadwell, Esq.
Robin Weber, JD
Matthew Valerio, Esq.

Introduction

In the 2013-2014 Legislative Session, the Vermont Legislature passed Act 61, which created a Working Group to review all of Vermont's criminal penalties, review other state's sentencing structures and to recommend a sentencing structure that allows for sentencing consistent with "the gravity of the offense, the culpability of the offender, the offender's criminal history, and the personal characteristics of an individual offender that may be taken into account."

Vermont has 847 criminal offenses. The offenses are contained in various titles in the Vermont Statutes. A complete list of all crimes and their punishments can be found [here](#) (internet required). The offenses cover aspects of commercial interaction, environmental regulations and traditional common law crimes of violence and property damage. Current penalties range from a fifty cent fine, to death. The Working Group was charged with collecting all crimes and using this information to help guide its deliberations.

The Working Group met several times to discuss current sentencing laws, the laws of other jurisdictions and the recommendations of the Model Penal Code. The Working Group came to a consensus on the sentencing and fine structure presented below:

Felonies

Table 1: Working Group Consensus on Proposed Felony Sentencing Structure

	Maximum Imprisonment	Maximum Fine
Class A	Life	\$1,000,000
Class B	25 years	\$500,000
Class C	10 years	\$100,000
Class D	5 years	\$50,000
Class E	3 years	\$25,000

Misdemeanors

Table 2: Working Group Consensus on Proposed Misdemeanor Sentencing Structure

	Maximum Imprisonment	Maximum Fine
Class A	2 years	\$10,000
Class B	1 year	\$5,000
Class C	6 months	\$2,500
Class D	30 days	\$1,000
Class E	No term of imprisonment	\$500

Felony Imprisonment

Felony sentences in Vermont currently range from 2 years and 1 day (18 VSA 4223- Prescription Fraud) to the death penalty for Treason (13 VSA 3401) and Concerted Action (13 VSA 3484). Crimes that result in the death of a person have a sentencing range from 2 years (23 VSA 1130C- Allowing Impaired Driving) to Life without Parole for First and Second Degree Murder (13VSA 2303A1, 13VSA 2303A2). Meanwhile, impeding a livestock official in his/her official capacity, is punished the same as murder (6 VSA 3311(B)). Current felony sentencing statutes reflect the democratic process, but do not have a cohesive structure that reflects the gravity of the offense.

Vermont is not alone in its patchwork approach to felony criminal sanctions. In 2007, the American Law Institute began to address consistency in sentencing schemes. In its initial research, the ALI found that 14 states and the United States Criminal Code lacked any sentencing classification. In 2011, the committee issued a draft report with its recommended sentencing structure for felonies and misdemeanors¹.

The Working Group looked at the criminal code structure recommended by the Model Penal Code and jurisdictions that were similar to Vermont in the volume and type of crime². All jurisdictions reviewed had multiple levels of felony crimes. They are presented in Table 3, which lists the maximum sentence allowable for the class of crime. For ease of comparison, the actual titles of the levels used by the various jurisdictions have been replaced by A-E.

Table 3: Comparison of Felony Sentencing Structures

	MPC	North Dakota	Maine	New Hampshire	Vermont Recommended
A	Life	Life	30 Years	30 years	Life
B	20 years	20 Years	10 Years	10 years	25 years
C	10 years	10 Years	5 Years	NA	10 years
D	5 years	5 Years	NA	NA	5 years
E	3 years	NA	NA	NA	3 years

The Working Group adopted a sentencing scheme that more closely resembles the Model Penal Code, with the exception of Class B felonies. The recommended maximum sentence for Class B felonies would be 25 years in Vermont. The Working Group was concerned that the jump in years from 20 years to life imprisonment was too great to account for variances in criminal harm, the characteristics of the offender, and public perceptions of fairness in sentencing.

¹ <https://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%202%20-%20online%20version.pdf>

² South Dakota has three categories for life imprisonment or the death penalty, and an additional six categories for other felonies. The Working Group did not think that South Dakota's scheme was relevant to Vermont. Other comparable states such as Montana, do not have a classification scheme.

Felony Fines

The Model Penal Code does not recommend a fine structure for crimes. Table 4 illustrates the fine structure for comparable jurisdictions. Current maximum fines in Vermont range from \$1,000 (e.g. 20 VSA 3076- False Statement, Explosives) to \$1,000,000 (e.g. 18 VSA 4230C- Marijuana Trafficking). However, some crimes that are currently punishable by life in prison, such as Kidnapping (13 VSA 2405) and Aggravated Sexual Assault (13 VSA 3253) carry a maximum fine of \$50,000. Only the drug trafficking crimes carry a maximum fine of \$1,000,000.

Table 4: Comparison of Felony Fine Structures

	North Dakota	Maine	New Hampshire	Vermont Recommended
A	NA	\$50,000	\$4,000	\$1,000,000
B	\$10,000	\$20,000	\$2,000	\$500,000
C	\$10,000	\$5,000	NA	\$100,000
D	\$5,000	\$2,000	NA	\$50,000
E	NA	\$1,000	NA	\$25,000

The Working Group is recommending significantly larger maximum fines than comparable jurisdictions allow for. This recommendation is consistent with the current maximum fine allowable, \$1,000,000. In addition to supporting the current maximum fine approved of by the Legislature, the Working Group reasoned that possible monetary fines should reflect the seriousness of the offense, and that the comparable state's fine structures did not accomplish that goal. Further the Working Group wanted to give judges the discretion for larger fine amounts so that corporate or wealthy defendants would be deterred or feel a proportionate punishment to those that are less fortunate.

Misdemeanor Sentences

Current misdemeanor sentences currently range from fine only (e.g. 13 VSA 4010- Possession of a Gun silencer, \$25 fine) to up to 2 years' incarceration for crimes like Escape (23 VSA 1501). Two crimes carry a maximum penalty of 10 days incarceration (13 VSA 3438- Trespassing on Posted Land and 13 VSA 3442 – Closing Highways). Some misdemeanors have a maximum punishment of 30 days (e.g. 20 VSA 3132A2- Fireworks Possession) some by 60 days (e.g. 13 VSA 1026-Disorderly Conduct), some by a maximum of 90 days (e.g. 09 VSA 2470d- Consumer Protection). One hundred and ninety-seven crimes carry a maximum punishment of 1 year. Five carry a maximum punishment of 18 months (13 VSA 1042- Domestic Assault and 13 VSA 1380A – Vulnerable Adult, 20 VSA 3062, 3063 and 3064- Explosive and Tear Bombs Transportation and Packaging). Thirty crimes carry a maximum penalty of 2 years.

The comparable states and the Model Penal code all recommend two categories of misdemeanors, Nebraska, however, has six categories of misdemeanor sentencing.

Table 5: Comparison of Misdemeanor Sentencing Structures

	MPC	North Dakota	Maine	New Hampshire	Nebraska	Vermont Recommended
A	1 year	1 year	364 days	1 year	1 year	2 years
B	Six months	30 days	Six months	Fine Only (max \$1,200)	Six months	1 year
C	NA	NA	NA	NA	Three months	6 months
D	NA	NA	NA	NA	Seven days	30 days
E	NA	NA	NA	Na	Fine only (max \$500)	No imprisonment (probation, pre-approved furlough, other community sanctions)
F	NA	NA	NA	NA	Fine only (\$100)	NA

Because the Legislature has already authorized a wide range of maximum sentences for misdemeanors, including 2 year maximum misdemeanors, the Working Group consensus recommendation reflects that diversity. In 2014, 82.2% of the disposed charges in Criminal Court were misdemeanor charges. As the bulk of criminal cases are misdemeanors, the 5 tier recommendation continues to give the Legislature flexibility in assigning crimes to particular categories.

Misdemeanor Fine Structure

The current range of fines for misdemeanors ranges from \$5.00 (09 VSA 2572-Penalty for Use of Mark) to \$10,000 (13 VSA 2143- Violating Non-Profit Gaming Regulations). The fine structure in comparable states is listed in Table 6.

Table 6: Misdemeanor Fine Structures

	North Dakota	Maine	New Hampshire	Nebraska	Vermont Recommended
A	\$2,000	\$2,000	\$2,000	\$1,000	\$10,000
B	\$1,000	\$1,000	\$1,200 (fine only)	\$1,000	\$5,000
C	NA	NA		\$500	\$2,500
D	NA	NA		\$500	\$1,000
E	NA	NA		\$500 (fine only)	\$500
F	NA	NA		\$100 (fine only)	

As with the recommended Felony Fine Structure, the Misdemeanor Fine Structure departs in range from comparable states. This departure reflects the diversity in the current possible fines. The fine structure is also consistent with the range of imprisonment recommended.

Classification of Crimes into the Structure

The Working Group was not charged with placing certain crimes into certain categories. The Model Penal Code is silent on the type of crimes that should fall in a particular category. The Recorder's notes for the Model Penal Code states:

These are fundamental policy questions that must be confronted by responsible officials within each state. They are also questions with answers that change over time. The development of new rehabilitative treatment programs for an identifiable group of offenders, for example, may change sentencing outcomes thought most appropriate for that group. Community values about discrete forms of criminality are also constantly evolving.....The revised Code would impeach its own credibility were it to pretend Olympian knowledge of condign punishments.³

For other crime categories, the Working Group recommends that the Legislature consider consistency of like offenses and punishment, and offense characteristics (e.g. amount taken, subsequent offenses, tangible harm) when placing crimes in particular categories.

³ <https://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%202%20-%20online%20version.pdf> p. 10

Additional Recommendations

In reviewing all the crimes and their sentences, the Working Group came to the following consensus regarding sentencing in general.

1. The Legislature should consider de-criminalizing crimes that are currently punished by fine only that are regulatory in nature, including some Fish and Game criminal violations. There are currently 162 crimes that carry a fine only as punishment. The list of crimes can be found [here](#). (internet required)
2. The Legislature should consider revising outdated penalties. Treason (13 VSA 3401) is currently punishable by death. Vermont abolished the death penalty in 1965 and does not have the required infrastructure to prosecute, defend or carry out an execution. Impairing an inspector (6 VSA 3311(B)) is currently the only non-homicide crime punishable as a homicide. The Working Group strongly recommends these penalties be revised.
3. The Legislature should consider abolishing anachronistic crimes. Defacing a Butter Crate (9 VSA 2574) carries a fine of \$.05 to \$5.00. The Crime Research Group, Inc. has found no evidence that this crime has been charged in at least 10 years. A list of crimes with no charges disposed of in the last 10 years can be found [here](#). (internet required) Some of these crimes may no longer be relevant in today's society.
4. The Legislature should consider more alternative sanctions to incarceration. The Working Group recommends the Legislature consider adopting Judge Initiated Deferred Sentences for certain offenses. The Working Group also suggests the Legislature consider administrative probation without finding of guilt for appropriate offenses⁴.

⁴ New Hampshire has a similar provision called "Placed on File". Massachusetts has "Continued without a Finding". In both cases, the defendant is not convicted of a crime if during the time of administrative probation, the defendant earns no new arrest.