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H.617

Introduced by Representatives Burke of Brattleboro and Rachelson of
Burlington

Referred to Committee on

Date:

Subject: Corrections; probation, parole, and furlough conditions

Statement of purpose of bill as introduced: This bill proposes to limit the
imposition of conditions of probation, parole, and furlough to restrict otherwise
legal behavior of the person under supervision and to prohibit revocation of
probation, parole, and furlough for technical violations that are not new crimes.

An act relating to probation, parole, and furlough conditions

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

Sec. 1. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION

(a) The conditions of probation shall be such as the Court in its discretion
deems reasonably necessary to ensure that the offender will lead a law-abiding
life or to assist the offender to do so. The Court shall provide as an explicit
condition of every sentence to probation that if the offender is convicted of
another offense during the period for which the sentence remains subject to
revocation, then the Court may impose revocation of the offender's probation.

1 (b) When imposing a sentence of probation, the Court may, as a condition
2 of probation, require that the offender:

3 * * *

4 (18) Satisfy any other conditions reasonably related to his or her
5 rehabilitation. ~~Such conditions may include prohibiting the use of alcohol,~~
6 ~~prohibiting having contact with minors, prohibiting or limiting the use of a~~
7 ~~computer or other electronic devices, and permitting a probation officer access~~
8 ~~to all computers or other digital or electronic media, mail covers, subscription~~
9 ~~services, and credit card statements.~~ The Court shall not impose a condition
10 prohibiting the offender from engaging in any legal behavior unless the
11 condition is ~~reasonably related to the offender's rehabilitation or~~ substantially
12 necessary to reduce risk to ~~public~~ the safety of a victim or witness.

13 * * *

14 Sec. 2. 28 V.S.A. § 301 is amended to read:

15 § 301. SUMMONS OR ARREST OF PROBATIONER

16 At any time before the discharge of the probationer or the termination of the
17 period of probation:

18 (1) The Court may summon the probationer to appear before it or may
19 issue a warrant for his or her arrest if the probationer has violated a condition
20 of his or her probation by committing a new crime.

1 (2) Arrest of person on probation. Any correctional officer may arrest a
2 probationer without a warrant if, in the judgment of the correctional officer, the
3 probationer has violated a condition ~~or conditions~~ of his or her probation ~~other~~
4 ~~than a condition that the probationer pay restitution~~ by committing a new
5 crime; or may deputize any other law enforcement officer to arrest a
6 probationer without a warrant by giving him or her a written statement setting
7 forth that the probationer has, in the judgment of the correctional officer,
8 violated a condition ~~or conditions~~ of his or her probation ~~other than a condition~~
9 ~~that the probationer pay restitution~~ by committing a new crime. The written
10 statement delivered with the person by the arresting officer to the supervising
11 officer of the correctional facility to which the person is brought for detention
12 shall be sufficient warrant for detaining him or her.

13 (3) No right of action. Any probationer arrested and detained in
14 accordance with the provisions of this chapter shall have no right of action
15 against any law enforcement officer, correctional officer, employee of the
16 Department of Corrections, or any other persons because of such arrest and
17 detention.

18 (4) Detention pending hearing for probationer. Pending arraignment for
19 any charge of violation, the probationer shall continue to be detained at a
20 correctional facility. Thereafter, the Court may release the probationer
21 pursuant to 13 V.S.A. § 7554. ~~There shall be no right to bail or release, unless~~

1 ~~the person is on probation for a nonviolent misdemeanor or nonviolent felony~~
2 ~~and the probation violation did not constitute a new crime~~ There shall be a
3 right to bail only if the person is on probation for a nonviolent misdemeanor or
4 nonviolent felony and the new crime alleged is also a nonviolent misdemeanor
5 or nonviolent felony. As used in this subdivision:

6 (A) "Nonviolent felony" means a felony offense which is not a listed
7 crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual
8 exploitation of children in violation of 13 V.S.A. chapter 64.

9 (B) "Nonviolent misdemeanor" means a misdemeanor offense which
10 is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving
11 sexual exploitation of children in violation of 13 V.S.A. chapter 64 or
12 13 V.S.A. § 1030.

13 Sec. 3. 28 V.S.A. § 303 is amended to read:

14 § 303. GROUNDS FOR REVOCATION

15 (a) Probation shall not be revoked unless the probationer ~~violates a~~
16 ~~condition of his or her probation or is convicted of another~~ commits a new
17 crime. The violation or conviction A finding of probable cause by the court
18 regarding the new crime shall be both a necessary and a sufficient ground for
19 the revocation of probation.

1 (b) The court shall not revoke probation and order the confinement of the
2 probationer unless the court finds on the basis of the original offense and the
3 intervening conduct of the probationer that:

4 (1) ~~Confinement~~ confinement is necessary to protect the community
5 from further criminal activity by the probationer; or

6 (2) ~~The~~ the probationer is in need of correctional treatment which can
7 most effectively be provided if he or she is confined; or

8 (3) ~~It~~ it would unduly depreciate the seriousness of the ~~violation~~ new
9 crime if probation were not revoked.

10 Sec. 4. 28 V.S.A. § 502b is amended to read:

11 § 502b. TERMS AND CONDITIONS OF PAROLE

12 (a) When an inmate is paroled, the Parole Board shall establish terms and
13 conditions of parole that it deems reasonably necessary to ensure that the
14 inmate will lead a law-abiding life and that will assist the inmate to do so.
15 Such terms and conditions shall be set forth in the parolee's parole agreement.

16 ~~Terms and conditions of parole shall be designed to protect the victim,~~
17 ~~potential victims, and the public, and to reduce the risk of reoffense. Such~~
18 ~~conditions may include prohibiting the use of alcohol; prohibiting having~~
19 ~~contact with minors; prohibiting or limiting the use of a computer or other~~
20 ~~electronic devices; permitting a probation officer access to all computers or~~
21 ~~other digital or electronic media, mail covers, subscription services, and credit~~

1 ~~heard statements; and if a probation officer has reasonable grounds to believe~~
2 ~~the offender has violated a parole condition, permitting a probation officer to~~
3 ~~monitor or examine the offender's activities, communications, and use of any~~
4 ~~computer or other digital or electronic device, including cell phone,~~
5 ~~smartphone, digital camera, digital video camera, digital music player or~~
6 ~~recorder, digital video player or recorder, personal digital assistant, portable~~
7 ~~electronic storage device, gaming system, or any other contemporary device~~
8 ~~capable of the storage of digital electronic communication or data storage or~~
9 ~~access to the Internet or other computer or digital network~~ The Board shall not
10 impose a condition prohibiting the offender from engaging in any legal
11 behavior unless the condition is substantially related to reduce risk to the safety
12 of a victim or witness.

13 (b) The Parole Board may require a parolee as a condition of parole to
14 participate, as a resident or nonresident, in programs at a treatment center for
15 all or part of the period of parole, provided that the Commissioner certifies that
16 adequate treatment facilities, personnel, and programs are available. If the
17 Commissioner determines that the person's residence in the center or
18 participation in its programs, or both, should be terminated because the person
19 can derive no further significant benefits from such residence or participation,
20 or both, or because his or her residence or participation adversely affects the
21 rehabilitation of other residents or participants, he or she shall so notify the

1 ~~Board of parole~~ Parole Board, which shall thereupon make such other
2 provision with respect to the person as it deems appropriate.

3 (c) A person residing in and participating in programs at a treatment center
4 shall abide by the rules and regulations of the center and may be required to
5 pay such costs incident to residents as the Commissioner deems appropriate.

6 Sec. 5. 28 V.S.A. § 551 is amended to read:

7 § 551. ISSUANCE OF WARRANT; ARREST WITHOUT A WARRANT;
8 CONFINEMENT PENDING HEARING; AUTHORITY OF
9 CORRECTIONAL OFFICERS AND LAW ENFORCEMENT
10 OFFICERS

11 (a) Parole ~~board~~ Board warrant. The ~~board~~ Board may issue a warrant for
12 the arrest of a parolee, or may issue an order, to be served personally upon the
13 parolee, requiring him or her to appear before the ~~board~~ Board, if the ~~board~~
14 Board has reason to believe that a violation of parole that constitutes a new
15 crime has occurred. The warrant shall authorize any law enforcement officers
16 and any correctional officers to return the person to the custody of a
17 correctional facility.

18 (b) Fugitive from justice. A parolee for whose return a warrant has been
19 issued by the ~~board~~ Board, if it is found that a warrant cannot be served, shall
20 be considered to be a fugitive from justice or to have fled from justice.

1 (c) Arrest of person on parole. Any correctional officer designated by the
2 ~~commissioner~~ Commissioner may arrest a parolee without a warrant if, in the
3 judgment of the correctional officer, the person has violated a condition of his
4 or her parole by committing a new crime; or may deputize any other law
5 enforcement officer to do so by giving him or her a written statement setting
6 forth that the parolee has, in the judgment of the correctional officer, violated a
7 condition or conditions of his or her parole by committing a new crime. The
8 written statement delivered with the person by the arresting officer to the
9 supervising officer of the correctional facility to which the person is brought
10 for detention shall be sufficient warrant for detaining him or her.

11 (d) No right of action. Any parolee arrested and detained in accordance
12 with the provisions of this chapter shall have no right of action against any law
13 enforcement officer, correctional officer, employee of the ~~department of~~
14 ~~corrections~~ Department of Corrections, or any other persons because of such
15 arrest and detention.

16 (e) Detention pending hearing for parolee. Pending a hearing on the merits
17 upon any charge of violation, the parolee shall continue to be detained at a
18 correctional facility. The ~~parole board~~ Parole Board may authorize the
19 parolee's release from detention in accordance with the procedures set forth in
20 ~~section 13 V.S.A. § 7554 of Title 13. For the purposes of~~ As used in this
21 section, judicial officer, as defined in ~~section 13 V.S.A. § 7554(f) of Title 13,~~

1 shall include the ~~chair~~ Chair of the ~~parole board,~~ Parole Board or his or her
2 designee. There shall be no right to bail or release if the alleged violation is a
3 new crime.

4 Sec. 6. 28 V.S.A. § 552 is amended to read:

5 § 552. NOTIFICATION OF BOARD; HEARING

6 (a) Upon the arrest and detention of a parolee, the parole officer shall notify
7 the ~~board~~ Board immediately and shall submit in writing a report describing
8 the alleged violation of a condition or conditions of the inmate's parole.

9 (b) Upon receipt of the notification, or upon an arrest by warrant in
10 accordance with the provisions of section 551 of this title, the ~~board~~ Board
11 shall cause the inmate together with a parole officer to be brought before it
12 promptly for a hearing regarding the alleged violation. Parole officers may be
13 represented by legal counsel, which shall be provided by the appropriate ~~state's~~
14 ~~attorney~~ State's Attorney or the ~~attorney general~~ Attorney General upon
15 request, at hearings of the ~~parole board~~ Board.

16 (1) The hearing shall be conducted in accordance with such rules and
17 regulations as the ~~board~~ Board may adopt.

18 (2) If the alleged violation is established by ~~substantial~~ clear and
19 convincing evidence, the ~~board~~ Board may continue or revoke the parole, or
20 enter such other order as it determines to be necessary or desirable.

1 (c) In the event of the withdrawal of any warrant by the authority of the
2 ~~board~~ Board, or in the event that the ~~board~~ Board at the hearing on the alleged
3 violation finds that the parolee did not violate any condition of his or her
4 parole, or the law, the parolee shall be credited with any time lost by the
5 interruption of the running of his or her sentence.

6 Sec. 7. 28 V.S.A. § 808 is amended to read:

7 § 808. FURLOUGHS GRANTED TO OFFENDERS

8 * * *

9 (d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee
10 of the Department, or correctional officer responsible for supervising an
11 offender believes the offender is in violation of any ~~verbal or written~~ condition
12 of the furlough by committing a new crime, the officer or employee may
13 immediately lodge the offender at a correctional facility or orally or in writing
14 deputize any law enforcement officer or agency to arrest and lodge the
15 offender at such a facility. The officer or employee shall subsequently
16 document the reason for taking such action. The Department shall not impose
17 a condition prohibiting the offender from engaging in any legal behavior unless
18 the condition is substantially related to reduce risk to the safety of a victim or
19 witness.

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