

1 H.682

2 Introduced by Representatives Wizowaty of Burlington, Burke of Brattleboro,

3 Connor of Fairfield, Hooper of Montpelier, Moran of

4 Wardsboro, and Toleno of Brattleboro

5 Referred to Committee on

6 Date:

7 Subject: Corrections;

8 Statement of purpose of bill as introduced: This bill proposes to prohibit the  
9 arrest without a warrant of a probationer and revocation of probation for  
10 technical violations of the conditions of probation that do not otherwise  
11 constitute a crime unless alternative sanctions have previously been ordered.

12 An act relating to sanctions for technical violations of probation

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

14 Sec. 1. 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.

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;~~ and the conduct of the  
5 violation is also a crime or may deputize any other law enforcement officer to  
6 arrest a probationer without a warrant by giving him or her a written statement  
7 setting forth that the probationer has, in the judgment of the correctional  
8 officer, violated a condition or conditions of his or her probation ~~other than a~~  
9 ~~condition that the probationer pay restitution;~~ and the conduct of the violation  
10 is also a crime. The written statement delivered with the person by the  
11 arresting officer to the supervising officer of the correctional facility to which  
12 the person is brought for detention shall be sufficient warrant for detaining him  
13 or her.

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

19           (4) Detention pending hearing for probationer. Pending arraignment for  
20 any charge of violation, the probationer shall continue to be detained at a  
21 correctional facility. Thereafter, the ~~court~~ Court may release the probationer

1 pursuant to 13 V.S.A. § 7554. There shall be no right to bail or release, unless  
2 the person is on probation for a nonviolent misdemeanor or nonviolent felony  
3 and the probation violation did not constitute a new crime. As used in this  
4 subdivision:

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

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

12 Sec. 2. 28 V.S.A. §§ 303 and 304 are amended to read:

13 § 303. GROUNDS FOR REVOCATION

14 (a)(1) Probation shall not be revoked unless the probationer:

15 (A) violates a condition of his or her probation and has been  
16 previously sanctioned for a violation of the probationary sentence pursuant to  
17 section 304 of this title;

18 (B) violates a condition of his or her probation and the conduct that is  
19 the subject of the violation is also a crime; or

20 (C) is convicted of another crime.

1       (2) The violation or conviction shall be both a necessary and a sufficient  
2 ground for the revocation of probation.

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

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

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

10          (3) ~~It~~ it would unduly depreciate the seriousness of the violation if  
11 probation were not revoked.

12       § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF  
13               PROBATION

14       (a) If a violation is established by a proceeding conducted in accordance  
15 with section 302 of this title, ~~the court may, in its discretion, revoke probation~~  
16 ~~and require the probationer to serve the sentence which was suspended or order~~  
17 ~~that the sentence be served in the community pursuant to the provisions of~~  
18 ~~chapter 6 of this title.~~

19       ~~(b) As an alternative to revocation and imposition of sentence as provided~~  
20 ~~in subsection (a) of this section, the court, in its discretion, after a violation has~~

1 ~~been established, may:~~ and the conduct that is the subject of the violation is not  
2 a crime, the Court may:

3 (1) ~~Continue~~ continue the probationer on the existing sentence; ~~or~~

4 (2) ~~Effect, in accordance with subsection 253(b) of this title, necessary~~  
5 ~~or desirable changes or enlargements in~~ modify the conditions of probation; ~~or~~

6 (3) ~~Conduct~~ conduct a formal or informal conference with the  
7 probationer in order to reemphasize to him or her the necessity of compliance  
8 with the conditions of probation; ~~or~~

9 (4) ~~Issue~~ issue a formal or informal warning to the probationer that  
10 further violations may result in revocation of probation by the ~~court~~ Court; or

11 (5) ~~Continue~~ continue the probationer on the existing sentence, but  
12 require the probationer to serve any portion of the sentence.

13 ~~(e)(b)~~ Prior to ordering ~~either revocation or an alternative~~ a sanction for a  
14 violation of probation in accordance with subsection ~~(b)(a)~~ of this section, the  
15 ~~court~~ Court shall consider, but has complete discretion whether to follow,  
16 sanction guidelines established by the ~~department of corrections~~ Department of  
17 Corrections pursuant to subsection ~~(e)(d)~~ of this section.

18 ~~(d)(c)~~ No plea agreement shall limit the ~~court's~~ Court's discretion under  
19 this section.

20 ~~(e)(d)~~ The ~~department of corrections~~ Department of Corrections shall adopt  
21 rules pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~ that establish graduated

1       sanction guidelines for probation violations ~~as an alternative to revocation and~~  
2       ~~imposition of the original sentence.~~ These guidelines do not grant the  
3       ~~department~~ Department any authority to impose sanctions for probation  
4       violations.

5       Sec. 3. EFFECTIVE DATE

6       This act shall take effect on July 1, 2014.