

No. 41. An act relating to effective strategies to reduce criminal recidivism.

(S.108)

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

Sec. 1. SHORT TITLE

This act may be referred to and cited as “The War on Recidivism Act.”

Sec. 1a. FINDINGS

The general assembly finds:

(1) From 1996 to 2006, Vermont’s prison population doubled. To accommodate this increase, spending on corrections increased 129 percent from \$48 million in fiscal year 1996 to \$130 million in fiscal year 2008. Yet during this time, Vermont’s crime rate remained stable and the state has one of the lowest crime rates in the country.

(2) In 2008, the Pew Center on the States estimated that if trends continued, the state prison population would increase 23 percent by 2018, resulting in additional costs of \$82 to \$206 million. In an effort to stem the growth of the prison population, reduce spending on corrections, and increase public safety, the legislature passed justice reinvestment legislation in 2008. Since that time, Vermont’s prison population growth has slowed, and in the last year has declined.

(3) A key component to justice reinvestment is using evidence-based practices to reduce recidivism. The Council of State Government’s Justice

Center, a leader in providing nonpartisan advice to states on justice reinvestment issues, has identified four key areas to form the basis of criminal justice policy decisions aimed at reducing recidivism.

(A) Focus on the offenders most likely to commit crimes. Studies show that intensive supervision and incarceration can actually increase recidivism rates for low-risk offenders; thus, identifying exactly who should be the focus of the state's efforts is critical.

(B) Invest in programs that work and ensure that they are working well. Drug treatment both in prison and the community, cognitive-behavioral treatment programs, and intensive community supervision combined with treatment oriented programs have shown to reduce recidivism.

(C) Strengthen supervision and deploy swift and certain sanctions. Policymakers should ensure that the offenders most likely to reoffend receive the most intensive supervision, and balance monitoring compliance with participation in programs that can reduce risk to public safety, and respond with immediate, certain, and proportional sanctions.

(D) Use strategies that reduce recidivism in communities where there are a high number of persons under the supervision of the department of corrections.

(4) No national standard exists for defining recidivism. Measures of recidivism used by various correctional agencies include arrest, convictions

and return to incarceration. Standard follow-up periods are also essential in comparing recidivism rates. Vermont's primary method of measuring recidivism is the percent of offenders reconvicted for a new offense within three years, which currently stands at 52 percent. However, most states and the Bureau of Justice Statistics use the percent of offenders returned to prison for a new sentence of one year or more or for a revocation of supervision to measure recidivism. Thus, Vermont includes some offenders in recidivist populations who are not counted in other jurisdictions.

* * * Indeterminate Sentences * * *

Sec. 2. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions. A sentence shall not

be considered fixed as long as the maximum and minimum terms are not identical.

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* * * Nonviolent Misdemeanors * * *

Sec. 3. 28 V.S.A. § 808 is amended to read:

§ 808. FURLOUGHS GRANTED TO ~~INMATES~~ OFFENDERS

(a) The department may extend the limits of the place of confinement of an ~~inmate~~ offender at any correctional facility if the ~~inmate~~ offender agrees to comply with such conditions of supervision the department, in its sole discretion, deems appropriate for that ~~inmate's~~ offender's furlough. The department may authorize furlough for any of the following reasons:

- (1) To visit a critically ill relative.
- (2) To attend a the funeral of a relative.
- (3) To obtain medical services.
- (4) To contact prospective employers.
- (5) To secure a suitable residence for use upon discharge.
- (6) To continue the process of reintegration initiated in a correctional

facility. The ~~inmate~~ offender may be placed in a program of conditional reentry status by the department upon the ~~inmate's~~ offender's completion of the minimum term of sentence. While on conditional reentry status, the ~~inmate~~ offender shall be required to participate in programs and activities that hold the

~~inmate offender~~ accountable to victims and the community pursuant to section 2a of this title.

~~(7) When recommended by the department and ordered by a court:~~

~~(A) Treatment furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.~~

~~(B)(i) Home confinement furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences, enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court, the department, or both. A sentence to home confinement furlough shall not exceed a total of 180 days and shall require the defendant:~~

~~(I) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order;~~

~~or~~

~~(II) to remain at a preapproved residence 24 hours a day on~~

~~lock down status except for medical appointments and court appearances.~~

~~(ii) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, the court shall consider:~~

~~(I) the nature of the offense with which the defendant was charged and the nature of the offense with which the defendant was convicted;~~

~~(II) the defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight; and~~

~~(III) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.~~

~~(8) To prepare for reentry into the community.~~

~~(A) Any offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subdivision (C) of this subdivision (8), provided that an offender sentenced to a minimum term of fewer than 365 days shall not be eligible for furlough under this subdivision until the offender has served at least one half of his or her minimum term of incarceration.~~

~~(B) Except as provided in subdivision (D) of this subdivision (8), any offender sentenced to incarceration is eligible to earn five days toward~~

~~reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the inmate has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subdivision (C) of this subdivision (8) and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subdivision may be awarded in addition to the reintegration furlough authorized in subdivision (A) of this subdivision (8). The commissioner shall have the discretion to determine the frequency with which calculations under this subdivision shall be made provided they are made at least as frequently as every six months.~~

~~(C) The commissioner may authorize reintegration furlough under subdivisions (A) and (B) of this subdivision (8) only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to:~~

~~(i) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.~~

~~(ii) Ensure adequate departmental supervision of the offender~~

~~when furloughed into the community.~~

~~(D) The commissioner may not award days toward reintegration furlough under subdivision (B) of this subdivision (8) if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:~~

~~(i) Arson causing death as defined in 13 V.S.A. § 501;~~

~~(ii) Assault and robbery with a dangerous weapon as defined in subsection 608(b) of Title 13;~~

~~(iii) Assault and robbery causing bodily injury as defined in subsection 608(c) of Title 13;~~

~~(iv) Aggravated assault as defined in 13 V.S.A. § 1024;~~

~~(v) Murder as defined in 13 V.S.A. § 2301;~~

~~(vi) Manslaughter as defined in 13 V.S.A. § 2304;~~

~~(vii) Kidnapping as defined in 13 V.S.A. § 2405;~~

~~(viii) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;~~

~~(ix) Maiming as defined in 13 V.S.A. § 2701;~~

~~(x) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);~~

~~(xi) Aggravated sexual assault as defined in 13 V.S.A. § 3253;~~

~~(xii) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(e); or~~

~~(xiii) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.~~

~~(E) An offender incarcerated for driving while under the influence of alcohol under subsection 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subdivision (C) of this subdivision (8), provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subdivision until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to continually monitor the offender's location and blood alcohol level, or other equipment such as an alcohol ignition interlock system, or both.~~

~~(F) Prior to release under this subdivision (8), the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.~~

(b) An ~~inmate~~ offender granted a furlough pursuant to this section may be accompanied by an employee of the department, in the discretion of the commissioner, during the period of the ~~inmate's~~ offender's furlough. The department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

(c) The extension of the limits of the place of confinement authorized by this section shall in no way be interpreted as a probation or parole of the ~~inmate~~ offender, but shall constitute solely a permitted extension of the limits of the place of confinement for ~~inmates~~ offenders committed to the custody of the commissioner.

(d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee of the department, or correctional officer responsible for supervising an offender believes the offender is in violation of any verbal or written condition of the furlough, the officer or employee may immediately lodge the offender at a correctional facility or orally or in writing deputize any law enforcement officer or agency to arrest and lodge the offender at such a facility. The officer or employee shall subsequently document the reason for taking such action.

(e) ~~{Deleted.}~~

~~(f) Medical furlough.~~ The commissioner may place on medical furlough

any inmate offender who is serving a sentence, including an inmate offender who has not yet served the minimum term of the sentence, who is diagnosed as suffering from a terminal or debilitating condition so as to render the inmate offender unlikely to be physically capable of presenting a danger to society.

The commissioner shall develop a policy regarding the application for, standards for eligibility of and supervision of persons on medical furlough. The inmate offender may be released to a hospital, hospice, other licensed inpatient facility or other housing accommodation deemed suitable by the commissioner.

~~(g) Treatment furlough. The department may place on furlough an inmate who has not yet served the minimum term of the sentence, provided the approval of the sentencing judge is first obtained, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the inmate's risk to reoffend or cause harm to himself or herself or to others in the facility. The inmate shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of~~

~~their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.~~

~~(h)~~(f) While appropriate community housing is an important consideration in release of ~~inmates~~ offenders, the department of corrections shall not use lack of housing as the sole factor in denying furlough to ~~inmates~~ offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the ~~inmate offender~~ will be served by reentering the community on furlough.

(g) Subsections (b)–(f) of this section shall also apply to sections 808a and 808c of this title.

Sec. 3a. 28 V.S.A. §§ 808a–808d are added to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet

served the minimum term of the sentence, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender's risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of

recidivism. An offender shall not be eligible for treatment furlough under this subdivision, if, at the time of sentencing, the court makes written findings that treatment furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.

(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court, the department, or both.

(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the

offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. An offender shall not be eligible for home confinement furlough under this subsection, if, at the time of sentencing, the court makes written findings that home confinement furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender, or the criteria for a home confinement furlough set forth in this section have not been met. Such a finding shall be set forth as a condition on the mittimus.

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and

the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(e) At the request of the department, the court may vacate a condition of a mittimus prohibiting home confinement issued under subsection (b) of this section, based upon a showing of changed circumstances by the department.

§ 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section.

Except as provided in subdivision (2) of this subsection, an offender sentenced to a minimum term of fewer than 365 days shall not be eligible for furlough under this subdivision until the offender has served at least one-half of his or her minimum term of incarceration.

(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made

a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. An offender shall not be eligible for a reintegration furlough under this subdivision if, at the time of sentencing, the court makes written findings that it is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

(1) Arson causing death as defined in 13 V.S.A. § 501;

(2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) Aggravated assault as defined in 13 V.S.A. § 1024;

(5) Murder as defined in 13 V.S.A. § 2301;

(6) Manslaughter as defined in 13 V.S.A. § 2304;

(7) Kidnapping as defined in 13 V.S.A. § 2405;

(8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;

(9) Maiming as defined in 13 V.S.A. § 2701;

(10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);

(11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;

(12) Burglary into an occupied dwelling as defined in 13 V.S.A.

§ 1201(c); or

(13) Lewd or lascivious conduct with a child as defined in 13 V.S.A.

§ 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; FURLOUGH AT THE DISCRETION OF THE DEPARTMENT

For purposes of sections 808a–808c of this title, “eligible misdemeanor” means a misdemeanor crime that is not one of the following crimes:

(1) Cruelty to animals involving death or torture as defined in 13 V.S.A. § 352(1) and (2).

(2) Simple assault as defined in 13 V.S.A. § 1023(a)(1).

(3) Simple assault with a deadly weapon as defined in 13 V.S.A. § 1023(a)(2).

(4) Simple assault of a law enforcement officer, firefighter, emergency medical personnel member, or health care worker while he or she is performing a lawful duty as defined in 13 V.S.A. § 1023(a)(1).

(5) Reckless endangerment as defined in 13 V.S.A. § 1025.

- (6) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(a)(1).
- (7) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(b).
- (8) Violation of an abuse prevention order, first offense, as defined in 13 V.S.A. § 1030.
- (9) Stalking as defined in 13 V.S.A. § 1062.
- (10) Domestic assault as defined in 13 V.S.A. § 1042.
- (11) Cruelty to children over 10 years of age by one over 16 years of age as defined in 13 V.S.A. § 1304.
- (12) Cruelty by a person having custody of another as defined in 13 V.S.A. § 1305.
- (13) Abuse, neglect, or exploitation of a vulnerable adult as provided in 13 V.S.A. §§ 1376-1381.
- (14) Hate-motivated crime as defined in 13 V.S.A. § 1455 or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.
- (15) Voyeurism as defined in 13 V.S.A. § 2605.
- (16) Prohibited acts as defined in 13 V.S.A. § 2632.
- (17) Obscenity as defined in chapter 63 of Title 13.
- (18) Possession of child pornography as defined in 13 V.S.A. § 2827.
- (19) Possession of a dangerous or deadly weapon in a school bus or

school building as defined in 13 V.S.A. § 4004(a).

(20) Possession of a dangerous or deadly weapon on school property with intent to injure as defined in 13 V.S.A. § 4004(b).

(21) Possession of a firearm in court as defined in 13 V.S.A. § 4016(b)(1).

(22) Possession of a dangerous or deadly weapon in court as defined in 13 V.S.A. § 4016(b)(2).

(23) Failure to comply with the sex offender registry as defined in 13 V.S.A. § 5409.

(24) Careless or negligent operation of a motor vehicle resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b).

(25) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c).

(26) Boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323.

Sec. 3b. EMERGENCY RULES

The department of corrections may adopt emergency rules in accordance with 3 V.S.A. § 844 for the purpose of compliance with 28 V.S.A. § 808c(c) as it relates to 28 V.S.A. § 808c(a)(2).

Sec. 3c. 28 V.S.A. §§ 808a–808c are amended to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender's risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached,

the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for treatment furlough under this subdivision, if, at the time of sentencing, the court makes written findings that treatment furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.~~

(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to

a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court, the department, or both.

(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for home confinement furlough under this subsection, if, at the time of sentencing, the court makes written findings that home confinement furlough is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender, or the criteria for a home confinement furlough set forth in this section have not been met. Such a finding shall be set forth as a condition on the mittimus.~~

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) to remain at a preapproved residence at all times except for

scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

~~(e) At the request of the department, the court may vacate a condition of a mittimus prohibiting home confinement issued under subsection (b) of this section, based upon a showing of changed circumstances by the department.~~

§ 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to

completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section.

Except as provided in subdivision (2) of this subsection, an offender sentenced to a minimum term of fewer than 365 days shall not be eligible for furlough under this subdivision until the offender has served at least one-half of his or her minimum term of incarceration.

(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism. ~~An offender shall not be eligible for a reintegration furlough under this subdivision if, at the time of sentencing, the court makes written findings that it is not likely to ensure public safety or victim safety, or is not likely to reduce the risk of recidivism for the offender.~~

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title

and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum

term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

- (1) Arson causing death as defined in 13 V.S.A. § 501;
- (2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) Aggravated assault as defined in 13 V.S.A. § 1024;
- (5) Murder as defined in 13 V.S.A. § 2301;
- (6) Manslaughter as defined in 13 V.S.A. § 2304;
- (7) Kidnapping as defined in 13 V.S.A. § 2405;
- (8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;
- (9) Maiming as defined in 13 V.S.A. § 2701;
- (10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);
- (11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or
- (13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community

up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for

nonviolent, low-risk misdemeanor offenses.

(b) Membership. The committee shall be composed of the following members:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate committee on committees;

(2) the chair of the senate committee on judiciary;

(3) the chair of the house committee on judiciary;

(4) a member of the senate appointed by the senate committee on committees;

(5) a member of the house appointed by the speaker of the house;

(6) the governor's special assistant on corrections; and

(7) the administrative judge.

(c) Powers and duties.

(1) The committee shall:

(A) Review the statutory sentences for all nonviolent misdemeanor offenses as defined in 28 V.S.A. § 301.

(B) Consider whether incarceration for such misdemeanors may be counterproductive because it disrupts stabilizing factors such as housing, employment, and treatment.

(C) Examine the policy of housing low-risk misdemeanants with the

general prison population and whether alternatives should be employed.

(D) Consider restorative justice principles in its deliberations.

(2) The committee shall consult stakeholders while engaging in its mission.

(3) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. By December 1, 2011, the committee shall report to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times and shall cease to exist on January 1, 2012.

(f) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010.

* * * Measuring Recidivism * * *

Sec. 5. STANDARD MEASURE OF RECIDIVISM

(a) Currently, no national standard exists for defining recidivism. Measures of recidivism used by correctional agencies include arrest.

convictions, and return to incarceration. Standard follow-up periods are also necessary when comparing recidivism rates. In general, offenders tracked for three years will have higher recidivism rates than offenders only tracked for one year due to a longer period at risk.

(b)(1) In order to target sentences and services effectively to reduce recidivism, the department of corrections shall calculate the rate of recidivism based upon offenders who are sentenced to more than one year of incarceration, who, after release from incarceration, return to prison within three years for a conviction for a new offense or a violation of supervision resulting, and the new incarceration sentence is at least 90 days.

(2) The department shall report on this measure to the general assembly in the department's annual report.

(c) It is the intent of the general assembly that the department of corrections shall generate data based on the measurement described in subsection (b) of this section, including recidivism rates and costs for furlough and intermediate sanctions, and present the data to the joint committee on corrections oversight no later than September 30, 2011.

(d) Upon receipt of the data referred to in subsection (c) of this section and no later than December 15, 2011, the joint committee on corrections oversight, in consultation with the department of corrections, shall establish a goal for reducing the number of recidivists over a one- to two-year period.

Sec. 5a. Sec. D9 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. D9. BUDGETARY SAVINGS; ALLOCATIONS IN FISCAL
YEAR 2011

(a) In FY 2011, a total of \$6,350,500.00 in investments in communities and services are included in the department of corrections budget. In Sec. B.338 of H.789 of 2010 (Appropriations Act), a total of \$3,186,000.00 is allocated for investments, and a total of \$3,164,500.00 is allocated in subsection (c) of this section. These investments are intended to result in reduced overall costs in the corrections budget by reducing the levels of incarceration and recidivism. ~~A specific goal of these investments is to reduce the three-year recidivism rate from the current level of 53 percent to a level of 40 percent by fiscal year 2014.~~ For each of these investments, the department shall develop benchmarks which can describe how well it is meeting the outcomes in No. 68 of the Acts of the 2009 Adj. Sess. (2010). Where appropriate, the department shall develop these benchmarks in consultation with the organizations with whom it enters into performance-based contracts to carry out these programs and services. The department shall present the benchmarks, and current baselines for each benchmark based on data currently collected to the corrections oversight committee at its meeting in October 2010.

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* * * Strategies * * *

Sec. 6. PLACE-BASED STRATEGIES TO REDUCE RECIDIVISM

Some Vermont communities have a disproportionate number of residents who have been through the correctional system. Corrections and law enforcement officials are increasingly interested in sharing information that can lead to more effective resource allocation and coordination to reduce recidivism in communities with a high number of persons under the supervision of the department of corrections. Therefore, the department of corrections shall work with the Vermont League of Cities and Towns, the association of the chiefs of police, and other local law enforcement agencies to develop strategies that coordinate services provided by state, local, and nonprofit entities to persons in the custody of the commissioner of corrections and that enhance public safety. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of the groups' efforts on this matter.

* * * Early Screening * * *

Sec. 7. SCREENING CRIMINAL DEFENDANTS AND ALTERNATIVES
TO VIDEO ARRAIGNMENT

(a) Screening defendants in the criminal justice system as early as possible to assess risk and needs is essential to reducing recidivism. The court

administrator, the commissioner of the department of corrections, the executive director of the department of state's attorneys and sheriffs, and the defender general shall work cooperatively to develop a statewide plan for screening all persons who are charged with a violent misdemeanor or any felony as early as possible and shall report their efforts to the general assembly no later than October 15, 2011.

(b) The group shall also study and propose alternatives to video arraignments, including the use of conference calls and the existing telephone system used by attorneys to reach their clients in correctional facilities. The group shall report to the house and senate committees on judiciary by October 15, 2011 on the results of the study and status of implementing any alternatives.

* * * Increasing the Use of Home Confinement

as a Sentencing Option * * *

Sec. 8. USE OF HOME CONFINEMENT AS AN ALTERNATIVE TO
INCARCERATION IN A CORRECTIONAL FACILITY

(a) In Sec. 7 of No. 157 of the Acts of the 2009 Adj. Sess. (2010), the general assembly created home confinement furlough whereby the court could sentence a person to serve a term of imprisonment but place the person to serve that term continuously at a preapproved residence under numerous restrictions. Between the date of enactment of the new law—July 1, 2010—and

February 28, 2011, home confinement was ordered only 25 times. The general assembly finds that the law is not being utilized with the frequency that the general assembly intended.

(b) The administrative judge, the commissioner of the department of corrections, the executive director of the department of state's attorneys and sheriffs, and the defender general shall work individually and cooperatively to increase awareness among attorneys, judges, and probation officers of the option of home confinement as provided in 28 V.S.A. § 808b.

(c) The entities identified in subsection (b) of this section shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

* * * Video Arraignments * * *

Sec. 9. SUSPENSION OF VIDEO ARRAIGNMENTS; REGIONAL ARRANGEMENTS

The general assembly finds that the use of video conferencing for arraignments has resulted in cost-shifting, higher costs, and logistical problems. Therefore, unless it is necessary for the interests of justice, the use of video conferencing for arraignments shall be suspended until the general assembly determines that there is evidence to support that it can be done in a manner that is cost-effective and efficient and ensures defendants' due process

rights.

Sec. 9a. FEASIBILITY STUDY

(a) The general assembly recognizes that the corrections population is part of the greater community and, therefore, any proposed study for the purpose of reforming offender health care should be conducted within the context and framework of the state's ongoing health care reform efforts for the entire state. The general assembly further recognizes that creating barriers to health care based on one's status as an offender is not in the state's best interests because it contradicts Vermont's efforts to create systems of care that work for all Vermonters.

(b) The agency of administration in conjunction with the joint fiscal office shall conduct a study which draws on resources across states agencies on how the state can best provide quality health care services to people incarcerated in Vermont at a cost savings to the state.

(c) The agency of administration will report its progress to the house committee on corrections and institutions and the house and senate committees on judiciary or before January 15, 2012.

* * * Recidivism Reduction Study * * *

Sec. 10. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK

CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH

(a) Research suggests that short, swift, and certain sanctions may be

effective at reducing recidivism among certain groups of offenders. Programs that employ strategies such as those of Georgia's Probation Options Management (POM) and Hawaii's Opportunity Probation with Enforcement (HOPE) have shown reduced rates of recidivism, drug use, missed appointments with probation officers, and probation revocations for program participants versus rates for control group participants. The general assembly and representatives of all statewide criminal justice agencies have been working to develop an innovative pilot project to reduce recidivism based on such a model, but more information is needed to ascertain how these principles can be applied in Vermont to achieve clearly stated goals set forth by the joint committee on corrections oversight with respect to reductions in recidivism.

(b) The Vermont center for justice research has been engaged in discussions with stakeholders regarding the employment of strategies used in POM and HOPE and specializes in collecting and analyzing criminal and juvenile justice information and providing technical assistance to state and local criminal justice agencies.

(c) The center shall evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system. The center's research shall focus on evidence-based initiatives related to swift and sure

delivery of sanctions and effective interventions for offenders. The center shall make its recommendations to the senate and house committees on judiciary and the joint committee on corrections oversight by December 1, 2011.

* * * Improving Community Supervision

Through a Reduction of Administrative Burden * * *

Sec. 11. DEPARTMENT OF CORRECTIONS; REDUCTION IN

ADMINISTRATIVE BURDEN ON PROBATION AND PAROLE
OFFICERS

(a) The general assembly finds that the current burden of administrative paperwork on probation and parole officers impedes their ability to supervise offenders in the community. Additionally, some paperwork, such as the offender responsibility plan, has diverged from its laudable original purpose and become unnecessarily time-consuming for staff and of little value to offenders. Rather than spending time in the field, visiting offenders at home, and checking on employment and housing, officers are forced to spend an inordinate amount of time at their desks filling out paperwork.

(b) To improve community supervision by getting more probation and parole officers out on the streets, the department of corrections shall undertake a review of the administrative burden placed on field officers and shall reduce paperwork handled by these officers by 50 percent as of July 1, 2012. In its

efforts, the department shall strongly consider the use of technology to assist field officers and the efficiency of providing portable devices so that officers would not need to leave the field to file reports. The department shall report to the joint committee on corrections oversight by November 1, 2011 regarding its progress in achieving the goal of a 50-percent reduction in paperwork, and shall continue to keep the joint committee, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

Sec. 11a. 28 V.S.A. § 122 is added to read:

§ 122. CONTRACTING FOR PROGRAMMING AND SERVICES

For the purpose of securing programming and services for offenders, the department of corrections shall publicly advertise or invite three or more bids. The contract for any such programming and services shall be awarded to one of the three lowest responsible bidders, conforming to specification, with consideration being given to the time required for provision of services, the purpose for which it is required, competency and responsibility of bidder, and his or her ability to render satisfactory services; but the commissioner with the approval of the secretary of human services shall have the right to reject any and all bids and to invite other bids.

Sec. 12. APPROPRIATION

(a) There is appropriated in fiscal year 2012 the sum of \$4,800.00 from the

general fund to the department of corrections for a grant to the Vermont center for justice research to evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system.

(b) There is appropriated in fiscal year 2012 the sum of \$5,600.00 from the general fund to the Vermont center for justice research for the purpose of conducting an outcome assessment of Vermont's two work camps.

(c) There is appropriated in fiscal year 2012 the sum of \$4,000.00 from the general fund to the Vermont criminal information center for the purpose of upgrading the Vermont criminal history information program to accept bulk criminal history requests by the name and date of birth of the research subject.

Sec. 13. EFFECTIVE DATES

(a) Sec. 2 of this act shall take effect on passage.

(b) Sec. 3c shall take effect on April 1, 2013.

(c) The remainder of the act shall take effect on July 1, 2011.

Approved: May 20, 2011