

1 S.108

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Corrections

5 Statement of purpose: This bill proposes to permit an offender who is  
6 sentenced to less than one year of incarceration for a low-level misdemeanor to  
7 be released on reintegration furlough at the discretion of the commissioner of  
8 the department of corrections; permit the commissioner to utilize home  
9 confinement as an option for supervising someone serving a sentence for a  
10 low-level misdemeanor; create the nonviolent misdemeanor sentence review  
11 committee to propose alternatives to incarceration for nonviolent, low-risk  
12 misdemeanor offenses; create a standard measure of recidivism; direct the  
13 department of corrections to work with local officials on place-based strategies  
14 to reduce crime and recidivism; increase awareness of home confinement  
15 sentencing option among attorneys, judges, and probation and parole officers;  
16 suspend the use of video conferencing for arraignments; direct the Vermont  
17 center for justice research to evaluate innovative programs and initiatives, best  
18 practices, and contemporary research regarding assessments of programmatic  
19 alternatives and pilot projects relating to reducing recidivism in the criminal  
20 justice system and to conduct an outcome assessment of Vermont's two work  
21 camps; improve community supervision through a reduction in administrative

1 obligations; permit the department of corrections to put programming and  
2 services contracts out to bid; and clarify that restrictions of legal behavior  
3 should be set as a condition of probation only when reasonably related to the  
4 offender's rehabilitation or necessary to reduce risk to public safety.

5 An act relating to effective strategies to reduce criminal recidivism

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

7 Sec. 1. SHORT TITLE

8 This act may be referred to and cited as "The War on Recidivism Act."

9 Sec. 2. FINDINGS

10 The general assembly finds:

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

16 (2) In 2008, the Pew Center on the States estimated that if trends  
17 continued, the state prison population would increase 23 percent by 2018,  
18 resulting in additional costs of \$82 to \$206 million. In an effort to stem the  
19 growth of the prison population, reduce spending on corrections, and increase  
20 public safety, the legislature passed justice reinvestment legislation in 2008.

1 Since that time, Vermont's prison population growth has slowed, and in the  
2 last year has declined.

3 (3) A key component to justice reinvestment is using evidence-based  
4 practices to reduce recidivism. The Council of State Government's Justice  
5 Center, a leader in providing nonpartisan advice to states on justice  
6 reinvestment issues, has identified four key areas to form the basis of criminal  
7 justice policy decisions aimed at reducing recidivism.

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

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

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

1           (D) Use place-based strategies that focus on sites where crime is high  
2           and there are a concentrated number of people under the supervision of the  
3           department.

4           (4) No national standard exists for defining recidivism. Measures of  
5           recidivism used by various correctional agencies include arrest, convictions  
6           and return to incarceration. Standard follow-up periods are also essential in  
7           comparing recidivism rates. Vermont's primary method of measuring  
8           recidivism is the percent of offenders reconvicted for a new offense within  
9           three years, which currently stands at 52 percent. However, most states and  
10           the Bureau of Justice Statistics use the percent of offenders returned to prison  
11           for a new sentence of one year or more or for a revocation of supervision to  
12           measure recidivism. Thus, Vermont includes some offenders in recidivist  
13           populations who are not counted in other jurisdictions.

14                           \* \* \* Indeterminate Sentences \* \* \*

15           Sec. 3. 13 V.S.A. § 7031 is amended to read:

16           § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

17           (a) When a respondent is sentenced to any term of imprisonment, other  
18           than for life, the court imposing the sentence shall not fix the term of  
19           imprisonment, unless such term is definitely fixed by statute, but shall  
20           establish a maximum and may establish a minimum term for which such  
21           respondent may be held in imprisonment. The maximum term shall not be

1 more than the longest term fixed by law for the offense of which the  
2 respondent is convicted and the minimum term shall be not less than the  
3 shortest term fixed by law for such offense. If the court suspends a portion of  
4 said sentence, the unsuspended portion of such sentence shall be the minimum  
5 term of sentence solely for the purpose of any reductions. A sentence shall not  
6 be considered fixed as long as the maximum and minimum terms are not  
7 identical.

8 \* \* \*

9 \* \* \* Nonviolent Misdemeanors \* \* \*

10 Sec. 4. 28 V.S.A. § 808 is amended to read:

11 § 808. FURLOUGHS GRANTED TO INMATES

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

17 \* \* \*

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

19 (A)(i) Any offender sentenced to incarceration may be furloughed to  
20 the community up to 180 days prior to completion of the minimum sentence, at  
21 the commissioner's discretion and in accordance with rules adopted pursuant

1 to subdivision (C) of this subdivision (8), provided that, except as provided in  
2 subdivision (A)(ii) of this subdivision (8), an offender sentenced to a minimum  
3 term of fewer than 365 days shall not be eligible for furlough under this  
4 subdivision until the offender has served at least one-half of his or her  
5 minimum term of incarceration.

6 (ii) An offender sentenced to a minimum term of fewer than 365  
7 days shall be eligible for furlough under this subdivision (8)(A)(ii), provided  
8 the department has made a determination based upon a risk assessment that the  
9 offender poses a low risk to public safety or victim safety and that employing  
10 an alternative to incarceration to hold the offender accountable is likely to  
11 reduce the risk of recidivism if the offender was sentenced for:

12 (I) A misdemeanor offense.

13 (II) Not one of the following:

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

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

17 (cc) Simple assault with a deadly weapon as defined in  
18 13 V.S.A. § 1023(a)(2).

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

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

2                    (ff) Simple assault of a correctional officer as defined in

3                    13 V.S.A. § 1028a(a)(1).

4                    (gg) Simple assault of a correctional officer as defined in

5                    13 V.S.A. § 1028a(b).

6                    (hh) Violation of an abuse prevention order, first offense, as

7                    defined in 13 V.S.A. § 1030.

8                    (ii) Stalking as defined in 13 V.S.A. § 1062.

9                    (jj) Domestic assault as defined in 13 V.S.A. § 1042.

10                  (kk) Cruelty to children over 10 years of age by one over 16

11                  years of age as defined in 13 V.S.A. § 1304.

12                  (ll) Cruelty by a person having custody of another as defined

13                  in 13 V.S.A. § 1305.

14                  (mm) Abuse, neglect, or exploitation of a vulnerable adult

15                  as provided in 13 V.S.A. §§ 1376-1381.

16                  (nn) Obscenity as defined in chapter 63 of Title 13.

17                  (oo) Possession of child pornography as defined in 13

18                  V.S.A. § 2827.

19                  (pp) Possession of a dangerous or deadly weapon in a school

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

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

3                   (rr) Possession of a firearm in court as defined in 13 V.S.A.  
4                   § 4016(b)(1).

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

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

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

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

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

15                  (xx) Hate-motivated crime as defined in 13 V.S.A. § 1455  
16                  or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.

17                                 \* \* \*

18                  (9) To appropriately supervise a low-risk offender.

19                  (A) The department may place an offender on treatment furlough or  
20                  home confinement furlough without order of the court if the department has  
21                  made a determination based upon a risk assessment that the offender poses a



1 low risk to public safety or victim safety and that employing an alternative to  
2 incarceration to hold the offender accountable is likely to reduce the risk of  
3 recidivism if the offender was sentenced for:

4 (i) A misdemeanor offense;

5 (ii) Not one of the following:

6 (I) Cruelty to animals involving death or torture as defined in  
7 13 V.S.A. § 352(1) and (2).

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

9 (III) Simple assault with a deadly weapon as defined in  
10 13 V.S.A. § 1023(a)(2).

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

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

15 (VI) Simple assault of a correctional officer as defined in  
16 13 V.S.A. § 1028a(a)(1).

17 (VII) Simple assault of a correctional officer as defined in  
18 13 V.S.A. § 1028a(b).

19 (VIII) Violation of an abuse prevention order, first offense, as  
20 defined in 13 V.S.A. § 1030.

21 (IX) Stalking as defined in 13 V.S.A. § 1062.

1                   (X) Domestic assault as defined in 13 V.S.A. § 1042.

2                   (XI) Cruelty to children over 10 years of age by one over 16  
3 years of age as defined in 13 V.S.A. § 1304.

4                   (XII) Cruelty by a person having custody of another as defined  
5 in 13 V.S.A. § 1305.

6                   (XIII) Abuse, neglect, or exploitation of a vulnerable adult as  
7 provided in 13 V.S.A. §§ 1376–1381.

8                   (XIV) Obscenity as defined in chapter 63 of Title 13.

9                   (XV) Possession of child pornography as defined in 13 V.S.A.  
10 § 2827.

11                   (XVI) Possession of a dangerous or deadly weapon in a school  
12 bus or school building as defined in 13 V.S.A. § 4004(a).

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

15                   (XVIII) Possession of a firearm in court as defined in  
16 13 V.S.A. § 4016(b)(1).

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

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



1           (4) two members appointed by the governor.

2           (c) Powers and duties.

3           (1) The committee shall:

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

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

9               (C) Examine the policy of housing low-risk misdemeanants with the  
10              general prison population and whether alternatives should be employed.

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

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

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

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

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

6                               \* \* \* Measuring Recidivism \* \* \*

7       Sec. 6. STANDARD MEASURE OF RECIDIVISM

8       (a) Currently, no national standard exists for defining recidivism.  
9       Measures of recidivism used by correctional agencies include arrest,  
10       convictions, and return to incarceration. Standard follow-up periods are also  
11       necessary when comparing recidivism rates. In general, offenders tracked for  
12       three years will have higher recidivism rates than offenders only tracked for  
13       one year due to a longer period at risk.

14       (b) In order to effectively target sentences and services to reduce  
15       recidivism, the department of corrections, in consultation with the joint  
16       committee on corrections oversight and the Vermont center on justice research,  
17       shall develop a clear standard of measure for criminal recidivism. The  
18       department shall consider the approaches of other states and the ability of  
19       Vermont to accurately gather data to track recidivism. The department shall  
20       provide information regarding recidivism rates in its quarterly reports to the  
21       committee.

1       (c) It is the intent of the general assembly that once recidivism is defined  
2       and corrections data is generated based upon this measurement, the joint  
3       committee on corrections oversight shall establish a goal for reducing the  
4       number of recidivists over a one- to two-year period.

5                               \* \* \* Place-Based Strategies \* \* \*

6       Sec. 7. PLACE-BASED STRATEGIES TO REDUCE RECIDIVISM

7       Some Vermont communities have a disproportionate number of residents  
8       who have been through the correctional system. Crime is often concentrated in  
9       areas of these communities, along with problems concerning employment,  
10       housing, and acute health care needs. Corrections and law enforcement  
11       officials are increasingly interested in sharing information that can lead to  
12       more effective resource allocation and coordination in these affected  
13       neighborhoods to reduce crime and reoffending. Therefore, the department of  
14       corrections shall work with the league of cities and towns and the association  
15       of the chiefs of police to develop place-based strategies that focus on sites  
16       where crime is high and there are a concentrated number of people under the  
17       supervision of the department. The department shall keep the joint committee  
18       on corrections oversight, the senate and house committees on judiciary, and the  
19       house committee on corrections and institutions informed of the groups' efforts  
20       on this matter.

\* \* \* Early Screening \* \* \*

Sec. 8. SCREENING CRIMINAL DEFENDANTS

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, 2012.

\* \* \* Increasing the Use of Home Confinement

as a Sentencing Option \* \* \*

Sec. 9. 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

1 assembly finds that the law is not being utilized with the frequency that the  
2 general assembly intended.

3 (b) The administrative judge, the commissioner of the department of  
4 corrections, the executive director of the department of state's attorneys and  
5 sheriffs, and the defender general shall individually and cooperatively work to  
6 increase awareness among attorneys, judges, and probation officers of the  
7 option of home confinement as provided in 28 V.S.A. § 808(a)(8)(B).

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

12 \* \* \* Video Arraignments \* \* \*

13 Sec. 10. SUSPENSION OF VIDEO ARRAIGNMENTS

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



\* \* \* Recidivism Reduction Study \* \* \*

Sec. 11. 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.

1       (c) The center shall evaluate innovative programs and initiatives, best  
2       practices, and contemporary research regarding assessments of programmatic  
3       alternatives and pilot projects relating to reducing recidivism in the criminal  
4       justice system. The center's research shall focus on evidence-based initiatives  
5       related to swift and sure delivery of sanctions and effective interventions for  
6       offenders. The center shall make its recommendations to the senate and house  
7       committees on judiciary and the joint committee on corrections oversight by  
8       December 1, 2011.

9       (d) The center shall conduct an outcome assessment of Vermont's two  
10       work camps. The evaluation shall focus on:

11               (1) The percentage of defendants who recidivate after release from the  
12       work camp;

13               (2) When defendants recidivate after release from the work camp;

14               (3) The nature of crimes committed by defendants who recidivate; and

15               (4) In which jurisdictions crimes are committed by recidivists.

16       (e) The center shall issue a final report of its findings to the senate and  
17       house committees on judiciary and the joint committee on corrections  
18       oversight by January 15, 2012.

\* \* \* Improving Community Supervision

Through a Reduction of Administrative Burden \* \* \*

Sec. 12. 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 keep the joint committee on corrections oversight, the senate and house committees on

1 judiciary, and the house committee on corrections and institutions informed of  
2 their efforts on this matter.

3 \* \* \* Direct Contract for Services \* \* \*

4 Sec. 13. 28 V.S.A. § 122 is added to read:

5 § 122. CONTRACTING FOR PROGRAMMING AND SERVICES

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

15 \* \* \* Conditions of Probation Regarding Child Support Obligations

16 and the Use of Restrictions on Legal Behavior \* \* \*

17 Sec. 14. 28 V.S.A. § 252 is amended to read:

18 § 252. CONDITIONS OF PROBATION

19 \* \* \*

20 (b) When imposing a sentence of probation, the court may, as a condition  
21 of probation, require that the offender:

1 \* \* \*

2 (5) Support the offender's dependents and meet other family  
3 responsibilities. The court shall inquire as to whether the offender is subject to  
4 an order to pay child support and whether the offender is in compliance with  
5 that order;

6 \* \* \*

7 (18) Satisfy any other conditions reasonably related to his or her  
8 rehabilitation. Such conditions may include prohibiting the use of alcohol,  
9 prohibiting having contact with minors, prohibiting or limiting the use of a  
10 computer or other electronic devices, and permitting a probation officer access  
11 to all computers or other digital or electronic media, mail covers, subscription  
12 services, and credit card statements. The court shall not impose a condition  
13 prohibiting the offender from engaging in any legal behavior unless the  
14 condition is reasonably related to the offender's rehabilitation or necessary to  
15 reduce risk to public safety because imposing such restrictions as a standard  
16 condition of probation when they are not warranted may be counterproductive.

17 \* \* \*

18 Sec. 15. APPROPRIATION

19 (a) There is appropriated in fiscal year 2012 the sum of \$4,800.00 from the  
20 general fund to the Vermont center for justice research to evaluate innovative  
21 programs and initiatives, best practices, and contemporary research regarding

1 assessments of programmatic alternatives and pilot projects relating to  
2 reducing recidivism in the criminal justice system.

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

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

10 Sec. 16. EFFECTIVE DATES

11 Sec. 3 of this act shall take effect on passage, and the remainder of the act  
12 shall take effect on July 1, 2011.