

1 S.108

2 Introduced by Committee on Judiciary

3 Date: April 13, 2011

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

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

*Sec. 10. SUSPENSION OF VIDEO ARRAIGNMENTS; REGIONAL ARRANGEMENTS*

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

*(b) The state's attorneys in counties which host a state, regional or contracted correctional facility, county jail or municipal lockup that has held a person overnight shall, upon request, handle an arraignment and bail arguments on behalf of the state's attorney in the county in which the offense is charged.*

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

7 Sec. 11. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK  
8 CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH

9 (a) Research suggests that short, swift and certain sanctions may be  
10 effective at reducing recidivism among certain groups of offenders. Programs  
11 that employ strategies such as those of Georgia's Probation Options  
12 Management (POM) and Hawaii's Opportunity Probation with Enforcement  
13 (HOPE) have shown reduced rates of recidivism, drug use, missed  
14 appointments with probation officers, and probation revocations for program

1 participants versus rates for control group participants. The general assembly  
2 and representatives of all statewide criminal justice agencies have been  
3 working to develop an innovative pilot project to reduce recidivism based on  
4 such a model, but more information is needed to ascertain how these principles  
5 can be applied in Vermont to achieve clearly stated goals set forth by the joint  
6 committee on corrections oversight with respect to reductions in recidivism.

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

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

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

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

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

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

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

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

9                           \* \* \* Improving Community Supervision

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

11           Sec. 12. DEPARTMENT OF CORRECTIONS; REDUCTION IN

12                           ADMINISTRATIVE BURDEN ON PROBATION AND PAROLE

13                           OFFICERS

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

1       (b) To improve community supervision by getting more probation and  
2 parole officers out on the streets, the department of corrections shall undertake  
3 a review of the administrative burden placed on field officers and shall reduce  
4 paperwork handled by these officers by 50 percent as of July 1, 2012. In its  
5 efforts, the department shall strongly consider the use of technology to assist  
6 field officers and the efficiency of providing portable devices so that officers  
7 would not need to leave the field to file reports. The department shall keep the  
8 joint committee on corrections oversight, the senate and house committees on  
9 judiciary, and the house committee on corrections and institutions informed of  
10 their efforts on this matter.

11                               \* \* \* Direct Contract for Services \* \* \*

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

13       § 122. CONTRACTING FOR PROGRAMMING AND SERVICES

14       For the purpose of securing programming and services for offenders, the  
15 department of corrections shall publicly advertise or invite three or more bids.  
16 The contract for any such programming and services shall be awarded to one  
17 of the three lowest responsible bidders, conforming to specification, with  
18 consideration being given to the time required for provision of services,  
19 purpose for which required, competency and responsibility of bidder, and his  
20 or her ability to render satisfactory services, but the commissioner with the

1 approval of the secretary of human services shall have the right to reject any  
2 and all bids and to invite other bids.

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

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

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

6 § 252. CONDITIONS OF PROBATION

7 \* \* \*

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

10 \* \* \*

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

15 \* \* \*

16 (18) Satisfy any other conditions reasonably related to his or her  
17 rehabilitation. Such conditions may include prohibiting the use of alcohol,  
18 prohibiting having contact with minors, prohibiting or limiting the use of a  
19 computer or other electronic devices, and permitting a probation officer access  
20 to all computers or other digital or electronic media, mail covers, subscription  
21 services, and credit card statements. The court shall not impose a condition

1 prohibiting the offender from engaging in any legal behavior unless the  
2 condition is reasonably related to the offender's rehabilitation or necessary to  
3 reduce risk to public safety because imposing such restrictions as a standard  
4 condition of probation when they are not warranted may be counterproductive.

5 \* \* \*

6 Sec. 15. APPROPRIATION

7 (a) There is appropriated in fiscal year 2012 the sum of \$4,800.00 from the  
8 general fund to the Vermont center for justice research to evaluate innovative  
9 programs and initiatives, best practices, and contemporary research regarding  
10 assessments of programmatic alternatives and pilot projects relating to  
11 reducing recidivism in the criminal justice system.

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

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

19 Sec. 16. EFFECTIVE DATES

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