

1 H.769

2 Introduced by Representatives Emmons of Springfield, Grad of Moretown,
3 and Ram of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Corrections; criminal procedure

7 Statement of purpose of bill as introduced: This bill proposes to require citing,
8 instead of arresting, a person suspected of a nonviolent misdemeanor; permit
9 expansion of the number of low risk offenders on response supervision on
10 caseloads consistent with the capacity of automated status reporting systems;
11 expand administrative probation for nonviolent offenders; and codify the
12 current practice of preapproved furlough for the purpose of permitting the
13 offender to participate in community programs.

14 An act relating to strategies to reduce the incarcerated population

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

16 Sec. 1. 13 V.S.A. § 5512 is added to read:

17 § 5512. ARREST WARRANT FOR NONVIOLENT MISDEMEANOR

18 (a) If a law enforcement officer has probable cause to believe a person has
19 committed or is committing a nonviolent misdemeanor, the officer may issue a
20 citation to appear before a judicial officer. The officer shall not arrest the

1 person for a nonviolent misdemeanor unless other circumstances exist under
2 which the officer has authority to arrest the person. This subsection shall apply
3 whether the suspected criminal conduct occurs in the presence of the officer or
4 outside the presence of the officer.

5 (b) A law enforcement officer shall execute an arrest warrant only during
6 the operating hours of the issuing court if the alleged offense that is the basis of
7 the warrant is a nonviolent misdemeanor.

8 (c) “Nonviolent misdemeanor” shall have the same meaning as provided in
9 28 V.S.A. § 301.

10 Sec. 2. 28 V.S.A. § V.S.A. § 105(d) is amended to read:

11 (d) The ~~department~~ Department shall establish the following caseload
12 ranges for offender profiles:

13 (1) All ~~listed~~ offenders ~~requiring~~ requiring serving a sentence for a listed crime as
14 defined in 13 V.S.A. § 5301 who require risk management shall be supervised
15 at no more than 45 offenders per corrections officer.

16 (2) All nonlisted offenders requiring risk management shall be
17 supervised at no more than 60 offenders per corrections officer.

18 (3) All offenders requiring response supervision ~~shall~~ may be supervised
19 ~~at no more than 150 offenders per corrections officer.~~

1 ~~(4) All offenders requiring administrative supervision may be supervised~~
2 on caseloads consistent with the capacity of automated status reporting systems
3 as established by the ~~department~~ Department.

4 ~~(5)~~(4) When there is a mixed profile caseload in which a single
5 corrections officer supervises offenders with different supervision levels and at
6 least one-third of the offenders require a more intensive supervision demand
7 than the other offenders, the caseload shall be supervised at the lowest level of
8 offender-to-staff ratio.

9 Sec. 3. 28 V.S.A. § 205 is amended to read:

10 § 205. PROBATION

11 (a)(1) After passing sentence, a court may suspend all or part of the
12 sentence and place the person so sentenced in the care and custody of the
13 Commissioner upon such conditions and for such time as it may prescribe in
14 accordance with law or until further order of court.

15 (2) The term of probation for misdemeanors shall be for a specific term
16 not to exceed two years unless the Court, in its sole discretion, specifically
17 finds that the interests of justice require a longer or an indefinite period of
18 probation.

19 (3)(A) The term of probation for nonviolent felonies shall not exceed
20 four years or the statutory maximum term of imprisonment for the offense,

1 whichever is less, unless the Court, in its sole discretion, specifically finds that
2 the interests of justice require a longer or an indefinite period of probation.

3 (B) As used in this subdivision, “nonviolent felonies” means an
4 offense which is not:

5 (i) a listed crime as defined in 13 V.S.A. § 5301(7); or

6 (ii) an offense involving sexual exploitation of children in
7 violation of 13 V.S.A. chapter 64.

8 (4) Nothing in this subsection shall prevent the Court from terminating
9 the period of probation and discharging a person pursuant to section 251 of this
10 title.

11 (5) The probation officer of a person on probation for a specific term
12 shall review the person’s case file during probation and, not less than 45 days
13 prior to the expiration of the probation term, may file a petition with the Court
14 requesting the Court to extend the period of probation for a specific term not to
15 exceed one year in order to provide the person the opportunity to complete
16 programming consistent with special conditions of probation. A hearing on the
17 petition for an extension of probation under this subsection shall comply with
18 the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal
19 Procedure.

20 (b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for
21 which the offender has been placed on probation shall have the right to request,

1 and receive from the Department of ~~Corrections~~ information regarding the
2 offender's general compliance with the specific conditions of probation.

3 Nothing in this section shall require the Department of ~~Corrections~~ to disclose
4 any confidential information revealed by the offender in connection with
5 participation in a treatment program.

6 (c)(1) ~~Unless the Court in its discretion finds that the interests of justice~~
7 ~~require additional standard and special conditions of probation, when the Court~~
8 ~~orders a specific term of probation for a qualifying offense nonviolent~~
9 ~~misdemeanor, the offender shall be placed on administrative probation, which~~
10 ~~means that the only conditions of~~ After sentencing, the Department may place
11 a nonviolent misdemeanor offender on administrative probation provided that
12 the offender poses a low risk of reoffense and such placement would not
13 compromise victim safety. The only conditions of administrative probation
14 shall be that the probationer:

15 (A) register with the Department of Corrections' probation and
16 parole office in his or her district;

17 (B) notify the probation officer of his or her current address each
18 month;

19 (C) within 72 hours, notify the Department of Corrections if probable
20 cause is found for a criminal offense during the term of probation; and

1 (D) not be convicted of a criminal offense during the term of
2 probation.

3 (2) As used in this subsection, ~~“qualifying offense”~~ “nonviolent
4 misdemeanor” means: a misdemeanor offense which is not a listed crime as
5 defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of
6 children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

7 ~~(A) Unlawful mischief under 13 V.S.A. § 3701.~~

8 ~~(B) Retail theft under 13 V.S.A. §§ 2575 and 2577.~~

9 ~~(C) Operating after suspension or revocation of license under~~
10 ~~23 V.S.A. § 674(a).~~

11 ~~(D) Bad checks under 13 V.S.A. § 2022.~~

12 ~~(E) Theft of services under 13 V.S.A. § 2582.~~

13 ~~(F) Disorderly conduct under 13 V.S.A. § 1026, unless the original~~
14 ~~charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~

15 ~~(G) Theft of rented property under 13 V.S.A. § 2591.~~

16 ~~(H) Operation without consent of owner under 23 V.S.A. § 1094(a).~~

17 ~~(I) Petit larceny under 13 V.S.A. § 2502.~~

18 ~~(J) Negligent operation of a motor vehicle under 23 V.S.A.~~
19 ~~§ 1091(a).~~

20 ~~(K) False reports to law enforcement under 13 V.S.A. § 1754.~~

21 ~~(L) Setting fires under 13 V.S.A. § 508.~~

1 ~~(M) A first offense of a minor's misrepresenting age, procuring,~~
2 ~~possessing, or consuming liquors under 7 V.S.A. § 657.~~

3 ~~(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)~~
4 ~~unless the original charge was a listed offense as defined in 13 V.S.A.~~
5 ~~§ 5301(7).~~

6 ~~(O) Unlawful trespass under 13 V.S.A. § 3705(a).~~

7 ~~(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).~~

8 (3) Nothing in this subsection shall prohibit a court from requiring
9 participation in the restorative justice program established in chapter 12 of
10 this title.

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

12 § 808. FURLOUGHS GRANTED TO OFFENDERS

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

18 (1) To visit a critically ill relative.

19 (2) To attend the funeral of a relative.

20 (3) To obtain medical services.

21 (4) To contact prospective employers.

1 (5) To secure a suitable residence for use upon discharge.

2 (6) To continue the process of reintegration initiated in a correctional
3 facility. The offender may be placed in a program of conditional reentry status
4 by the Department upon the offender's completion of the minimum term of
5 sentence. While on conditional reentry status, the offender shall be required to
6 participate in programs and activities that hold the offender accountable to
7 victims and the community pursuant to section 2a of this title.

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

15 (c) The extension of the limits of the place of confinement authorized by
16 this section shall in no way be interpreted as a probation or parole of the
17 offender, but shall constitute solely a permitted extension of the limits of the
18 place of confinement for offenders committed to the custody of the
19 Commissioner.

20 (d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee
21 of the Department, or correctional officer responsible for supervising an

1 offender believes the offender is in violation of any verbal or written condition
2 of the furlough, the officer or employee may immediately lodge the offender at
3 a correctional facility or orally or in writing deputize any law enforcement
4 officer or agency to arrest and lodge the offender at such a facility. The officer
5 or employee shall subsequently document the reason for taking such action.

6 (e) The Commissioner may place on medical furlough any offender who is
7 serving a sentence, including an offender who has not yet served the minimum
8 term of the sentence, who is diagnosed with a terminal or debilitating condition
9 so as to render the offender unlikely to be physically capable of presenting a
10 danger to society. The Commissioner shall develop a policy regarding the
11 application for, standards for eligibility of, and supervision of persons on
12 medical furlough. The offender may be released to a hospital, hospice, other
13 licensed inpatient facility, or other housing accommodation deemed suitable by
14 the Commissioner.

15 (f) While appropriate community housing is an important consideration in
16 release of offenders, the Department shall not use lack of housing as the sole
17 factor in denying furlough to offenders who have served at least their
18 minimum sentence for a nonviolent misdemeanor or nonviolent felony
19 provided that public safety and the best interests of the offender will be served
20 by reentering the community on furlough. The Department shall adopt rules to
21 implement this subsection.

1 (g) Subsections (b)–(f) of this section shall also apply to sections 808a,
2 808b, and 808c of this title.

3 Sec. 5. 28 V.S.A. § 808a is amended to read;

4 § 808a. TREATMENT FURLOUGH

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

10 (b) Provided the approval of the sentencing judge is first obtained, the
11 Department may place on treatment furlough an offender who has not yet
12 served the minimum term of the sentence, who, in the Department's
13 determination, needs residential treatment services not available in a
14 correctional facility. The services may include treatment for substance abuse
15 or personal violence or any other condition that the Department has determined
16 should be addressed in order to reduce the offender's risk to reoffend or cause
17 harm to himself or herself or to others in the facility. The offender shall be
18 released only to a hospital or residential treatment facility that provides
19 services to the general population. The State's share of the cost of placement
20 in such a facility, net of any private or federal participation, shall be paid
21 pursuant to memoranda of agreement between and within State agencies

1 reflective of their shared responsibilities to maximize the efficient and
2 effective use of State resources. In the event that a memorandum of agreement
3 cannot be reached, the Secretary of Administration shall make a final
4 determination as to the manner in which costs will be allocated.

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

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

18 Sec. 6. 28 V.S.A. § 808e is added to read:

19 § 808e. PREAPPROVED FURLOUGH

20 (a) When recommended by the Department, the court may sentence an
21 offender to serve a term of imprisonment, but place the offender on

1 preapproved furlough to participate in programs in the community
2 administered by the Department that reduce the offender's risk to reoffend.

3 (b) An offender who meets program requirements may be sentenced to
4 preapproved furlough to participate in a program that provides reparation to the
5 community in the form of supervised work activity.

6 Sec. 7. EFFECTIVE DATE

7 This act shall take effect on July 1, 2016.