

H.769

An act relating to strategies to reduce the incarcerated population

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

Sec. 1. 28 V.S.A. § 105 is amended to read:

§ 105. CASELOAD CAPACITY

(a) Corrections officers designated to work exclusively with offenders in the community who are 21 years of age ~~and~~ or younger shall have caseloads of no more than 25 youths.

(b) The department shall review the severity of offenses and assess the risk to reoffend of all offenders older than 21 years of age under its jurisdiction in the community and assign one of the following levels of supervision to each offender:

(1) Risk management supervision, which shall mean supervision at a level of intensity that includes case planning and measures to reduce risk of reoffense.

(2) Response supervision, which shall mean monitoring of the offender's compliance with conditions of probation or parole, including staff responding to violation behavior, and, as appropriate, use of the automated monitoring system.

~~(3) Administrative supervision, which shall mean monitoring of the offender's address and compliance with the law.~~

* * *

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

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

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

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

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

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

Sec. 2. 28 V.S.A. § 205 is amended to read:

§ 205. PROBATION

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

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

(3)(A) The term of probation for nonviolent felonies shall not exceed four years or the statutory maximum term of imprisonment for the offense, whichever is less, unless the Court, in its sole discretion, specifically finds that the interests of justice require a longer or an indefinite period of probation.

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

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

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

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

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

(b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for which the offender has been placed on probation shall have the right to request, and receive from the Department of ~~Corrections~~ information regarding the offender's general compliance with the specific conditions of probation. Nothing in this section shall require the Department of ~~Corrections~~ to disclose any confidential information revealed by the offender in connection with participation in a treatment program.

(c)(1) Unless the Court in its discretion finds that the interests of justice require additional standard and special conditions of probation, when the Court

orders a specific term of probation for a qualifying offense, the offender shall be placed on administrative probation, ~~which means that the only conditions of~~ . After sentencing, the Department may supervise a nonviolent misdemeanor offender on administrative probation, provided that the offender poses a low risk of reoffense and such placement would not compromise victim or public safety. The only conditions of administrative probation shall be that the probationer:

- (A) register with the Department of Corrections' probation and parole office in his or her district;
- (B) notify the probation officer of his or her current address each month;
- (C) within 72 hours, notify the Department of Corrections if probable cause is found for a criminal offense during the term of probation; and
- (D) not be convicted of a criminal offense during the term of probation.

(2) As used in this subsection, ~~“qualifying offense”~~ “nonviolent misdemeanor” means:

- ~~(A) Unlawful mischief under 13 V.S.A. § 3701.~~
- ~~(B) Retail theft under 13 V.S.A. §§ 2575 and 2577.~~
- ~~(C) Operating after suspension or revocation of license under 23 V.S.A. § 674(a).~~

- ~~(D) Bad checks under 13 V.S.A. § 2022.~~
- ~~(E) Theft of services under 13 V.S.A. § 2582.~~
- ~~(F) Disorderly conduct under 13 V.S.A. § 1026, unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~
- ~~(G) Theft of rented property under 13 V.S.A. § 2591.~~
- ~~(H) Operation without consent of owner under 23 V.S.A. § 1094(a).~~
- ~~(I) Petit larceny under 13 V.S.A. § 2502.~~
- ~~(J) Negligent operation of a motor vehicle under 23 V.S.A. § 1091(a).~~
- ~~(K) False reports to law enforcement under 13 V.S.A. § 1754.~~
- ~~(L) Setting fires under 13 V.S.A. § 508.~~
- ~~(M) A first offense of a minor's misrepresenting age, procuring, possessing, or consuming liquors under 7 V.S.A. § 657.~~
- ~~(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b) unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~
- ~~(O) Unlawful trespass under 13 V.S.A. § 3705(a).~~
- ~~(P) A first offense of possession under 18 V.S.A. § 4230(a)(1), a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.~~

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

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

§ 808. FURLOUGHS GRANTED TO OFFENDERS

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

- (1) To visit a critically ill relative.
- (2) To attend 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 offender may be placed in a program of conditional reentry status by the Department upon the offender's completion of the minimum term of sentence. While on conditional reentry status, the offender shall be required to participate in programs and activities that hold the offender accountable to victims and the community pursuant to section 2a of this title.

(b) An 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 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 offender, but shall constitute solely a permitted extension of the limits of the place of confinement for 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) The Commissioner may place on medical furlough any offender who is serving a sentence, including an offender who has not yet served the minimum

term of the sentence, who is diagnosed with a terminal or debilitating condition so as to render the 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 offender may be released to a hospital, hospice, other licensed inpatient facility, or other housing accommodation deemed suitable by the Commissioner.

(f) While appropriate community housing is an important consideration in release of offenders, the Department shall not use lack of housing as the sole factor in denying furlough to 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 offender will be served by reentering the community on furlough. The Department shall adopt rules to implement this subsection.

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

Sec. 4. 28 V.S.A. § 808a is 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.

(e)(b)(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.

(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.

Sec. 5. 28 V.S.A. § 808e is added to read:

§ 808e. PREAPPROVED FURLOUGH

(a) When recommended by the Department, the court may sentence an offender to serve a term of imprisonment, but place the offender on preapproved furlough to participate in programs in the community administered by the Department that reduce the offender's risk to reoffend.

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

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.