

1 S.127

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: March 18, 2021

5 Subject: Corrections; probation; pilot project

6 Statement of purpose of bill as introduced: This bill proposes to establish a
7 pilot project requiring the Department of Corrections to provide the court with
8 a report prior to sentencing to assist the court in setting conditions of probation
9 in felony cases.

10 ~~An act relating to a pilot project for a Department of Corrections report to~~
11 ~~assist the court setting conditions of probation~~

~~An act relating to the procedures and review of community supervision~~
~~for furlough revocation or interruption appeals~~

An act relating to clarifying community supervision furlough appeals and
the powers of the Corrections Monitoring Commission

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

13 ~~Sec. 1. PILOT PROJECT; DEPARTMENT OF CORRECTIONS~~

14 REPORT TO COURT; PROBATION CONDITIONS

15 (a) The Department of Corrections, in consultation with the Court

16 Administrator, shall establish a pilot project to provide the court with a report

17 prior to the sentencing of any defendant to a term of probation for a felony

18 pursuant to 28 V.S.A. § 205. The report shall be designed to assist the court in

19 ~~setting probation conditions and shall include the defendant's risk and needs~~

1 ~~assessment results, mental health and substance use disorder screening results,~~
2 ~~and criminal history.~~

3 (b) ~~The Department and the Court Administrator shall jointly select one or~~
4 ~~two units in the Criminal Division for participation in the pilot project~~
5 ~~established by this section. On or before December 1, 2022, the Department~~
6 ~~shall report the results of the pilot project to the Joint Legislative Committee~~
7 ~~on Justice Oversight. The report shall recommend whether the pilot project~~
8 ~~should be made permanent throughout the State.~~

9 Sec. 2. EFFECTIVE DATE

10 ~~This act shall take effect on passage.~~

~~Sec. 1. 28 V.S.A. § 724 is amended to read:~~

~~§ 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION
FURLOUGH~~

~~* * *~~

~~(b) 90-day 180-day interruption or revocation. Any interruption of an
offender's community supervision furlough after the Department has found a
technical violation of furlough conditions shall trigger a Department Central
Office case staffing review and Department notification to the Office of the
Defender General if the interruption will be 90 180 days or longer.~~

~~(c) Appeal.~~

~~(1) An offender whose community supervision furlough status is revoked
or interrupted for 90 180 days or longer for a technical violation shall have
the right to appeal the Department's determination to the Civil Division of the
Superior Court in accordance with Rule 74 of the Vermont Rules of Civil
Procedure. The appeal shall be based on a de novo review of the record. The
appellant may offer testimony, and, in its discretion for good cause shown, the
court may accept additional evidence to supplement the record. If additional
evidence is accepted by the court, the Department, through the Office of the
Vermont Attorney General, shall have the opportunity to present rebuttal
evidence, including testimony, for the court's consideration. The notice of~~

~~Appeal filed pursuant to Rule 74 shall include a certification that the court has subject matter jurisdiction. The Department shall file an objection to subject matter jurisdiction within 14 days, which shall stay the filing of the record on appeal until the court issues an order on the Department's objection. The appellant shall have the burden of proving by a preponderance of the evidence that the Department abused its discretion in imposing a furlough revocation or interruption for 90 180 days or longer pursuant to subsection (d) of this section.~~

~~(2) An appeal filed pursuant to this subsection shall be limited to determine whether the decision to interrupt or revoke an offender's community supervision furlough status was an abuse of discretion by the Department based on the criteria set forth in subdivision (d)(2) of this section. The length of interruption or revocation may be a consideration in the abuse of discretion determination.~~

~~(3) An appeal filed pursuant to this subsection shall be brought in the unit of the Superior Court in which the offender resided at the time that the offender's furlough status was revoked or interrupted or the unit in which the offender is detained after the offender's furlough status was revoked or interrupted. If an appeal is filed pursuant to this subsection in a unit lacking proper venue, the court, on its own motion or on timely motion of a party to the appeal, may transfer the appeal to a unit having proper venue.~~

~~(d) Technical violations.~~

~~(1) As used in this section, "technical violation" means a violation of conditions of furlough that does not constitute a new crime.~~

~~(2) It shall be abuse of the Department's discretion to revoke furlough or interrupt furlough status for 90 180 days or longer for a technical violation, unless:~~

~~(A) the offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control non-compliance is suitable; or~~

~~(B) the violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough; or~~

~~(C) the Commissioner has issued a warrant for the arrest of an offender because the offender absconded from furlough.~~

~~Sec. 2. APPLICABILITY~~

~~(a) Notwithstanding 1 V.S.A. §§ 213 and 214(b), the following provisions shall apply retroactively to any pending appeal filed at any time prior to the effective date of this act:~~

~~(1) the provisions of 28 V.S.A. § 724(c)(1) related to subject matter jurisdiction certification and the Department's ability to object to subject matter jurisdiction; and~~

~~(2) 28 V.S.A. § 724(c)(3) (venue).~~

~~(b) An appeal filed on or after the effective date of this act shall be reviewed under the 180-day or longer interruption or revocation period provided for in 28 V.S.A. § 724(c)(1) and (d)(2).~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~Sec. 1. 28 V.S.A. § 724 is amended to read:~~

~~§ 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION
FURLOUGH~~

~~***~~

~~(c) Appeal.~~

~~(1) An offender whose community supervision furlough status is revoked or interrupted for 90 days or longer for a technical violation shall have the right to appeal the Department's determination to the Civil Division of the Superior Court in accordance with Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based on a de novo review of the record. The appellant may offer testimony, and, in its discretion for good cause shown, the court may accept additional evidence to supplement the record. If additional evidence is accepted by the court, the Department, through the Office of the Vermont Attorney General, shall have the opportunity to present rebuttal evidence, including testimony, for the court's consideration. The notice of appeal filed pursuant to Rule 74 shall include a certification that the court has subject matter jurisdiction. The Department shall file an objection to subject matter jurisdiction within 14 days, which shall stay the filing of the record on appeal until the court issues an order on the Department's objection. The appellant shall have the burden of proving by a preponderance of the evidence that the Department abused its discretion in imposing a furlough revocation or interruption for 90 days or longer pursuant to subsection (d) of this section.~~

(2) An appeal filed pursuant to this subsection shall be limited to determine whether the decision to interrupt or revoke an offender's community supervision furlough status was an abuse of discretion by the Department based on the criteria set forth in subdivision (d)(2) of this section. The length of interruption or revocation may be a consideration in the abuse of discretion determination.

(3) An appeal filed pursuant to this subsection shall be brought in the unit of the Superior Court in which the offender resided at the time that the offender's furlough status was revoked or interrupted or the unit in which the offender is detained after the offender's furlough status was revoked or interrupted. If an appeal is filed pursuant to this subsection in a unit lacking proper venue, the court, on its own motion or on timely motion of a party to the appeal, may transfer the appeal to a unit having proper venue.

(d) Technical violations.

(1) As used in this section, "technical violation" means a violation of conditions of furlough that does not constitute a new crime.

(2) It shall be abuse of the Department's discretion to revoke furlough or interrupt furlough status for 90 days or longer for a technical violation, unless:

(A) ~~the~~ The offender's risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable; ~~or,~~

(B) ~~the~~ The violation or pattern of violations indicate the offender poses a danger to others ~~or to the community or poses a threat to abscond or escape from furlough.~~

(C) The offender's violation is absconding from community supervision furlough. As used in this subdivision, "absconding" means:

(i) the offender has not met supervision requirements, cannot be located with reasonable efforts, and has not made contact with Department staff within three days if convicted of a listed crime as defined in 13 V.S.A. § 5301(7) or seven days if convicted of a crime not listed in 13 V.S.A. § 5301(7);

(ii) the offender flees from Department staff or law enforcement;
or

(iii) the offender left the State without Department authorization.

Sec. 2. 28 V.S.A. § 123 is amended to read:

§ 123. DEPARTMENT OF CORRECTIONS MONITORING COMMISSION

(a) Creation. There is created the Corrections Monitoring Commission to provide advice and counsel to the Commissioner of Corrections with regard to the Commissioner's responsibility to manage the reporting of sexual misconduct; promote adherence to anti-retaliation policies; ensure overall policy implementation and effectiveness; improve the transparency, accountability, and cultural impact of agency decisions; and ensure that the ~~determination of investigatory findings~~ Department's investigations and any resulting disciplinary actions are ~~just and appropriate~~ compliant with Department policies, procedures, and directives.

** * **

(c) Powers and duties. The Commission shall have the following duties:

(1) Provide advice and counsel to the Commissioner of Corrections in carrying out the Commissioner's responsibilities at the Department of Corrections to ~~monitor~~ review the reporting of sexual misconduct, the implementation of adherence to the Department's anti-retaliation policy, create the transparency and implement implementation of policies relating to misconduct, and review the disciplinary actions policies.

(2) ~~Examine~~ Review facility staffing needs, employee retention, employee working conditions, and employee morale. The Commission may engage with current and former Department employees and individuals in the custody of the Department, review the Analysis of State of Vermont Employee Engagement Survey Results from the Department of Human Resources, and meet with the Vermont State Employees' Association to further the Commission's understanding of these issues. The Commission shall report annually on or before January 15 to the Commissioner of Corrections, the Secretary of Human Services, the House Committees on Corrections and Institutions and on Government Operations, and the Senate Committees on Judiciary and on Government Operations on:

** * **

(3) Monitor the Department in the following areas:

** * **

~~(F) investigations of compliance with the policies, procedures, or directives governing employee misconduct; investigations; the movement of contraband in facilities; threats to personal safety; and the Department's response to major events that occur in the Department of Corrections, including the death of an individual in the custody of the Commissioner of Corrections and the escape of an individual from a Department facility or Department custody; and~~

* * *

~~(f) Assistance. The Commission shall have the administrative, and technical, and legal assistance of the Department of Corrections. The Commission shall have the legal assistance of the Office of the Attorney General.~~

~~(g) Commissioner of Correction's duties.~~

~~(1) The creation and existence of the Commission shall not relieve the Commissioner of his or her the Commissioner's duties under the law to manage, supervise, and control the Department of Corrections.~~

~~(2) The Commissioner or designee shall produce all relevant Department policies, procedures, and directives requested by the Commission pursuant to its monitoring duties under this section.~~

* * *

~~(i) Confidentiality. Any information or report related to employee or incarcerated individual misconduct or discipline that is provided to the Commission shall be in a form that does not include personally identifiable information of any of the parties to the alleged misconduct and does not disclose any information that is required to be kept confidential pursuant to applicable State and federal law or any applicable collective bargaining or employment contract.~~

~~(j) Definition.~~

~~As used in subdivision (c)(3) of this section, "monitor" shall, when appropriate, include access to incident information in a form sufficient to discern the nature of the incident in question and compliance with the policies, procedures, or directives governing the incident.~~

Sec. 3. APPLICABILITY

~~Notwithstanding 1 V.S.A. §§ 213 and 214, the following provisions of Sec. 1 of this act shall apply retroactively to any pending appeal filed at any time prior to the effective date of this act:~~

(1) the provisions of 28 V.S.A. § 724(c)(1) related to subject matter jurisdiction certification and the Department's ability to object to subject matter jurisdiction; and

(2) 28 V.S.A. § 724(c)(3) (venue).

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.