

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 127
3 entitled “An act relating to a pilot project for a Department of Corrections
4 report to assist the court setting conditions of probation” respectfully reports
5 that it has considered the same and recommends that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. PILOT PROJECT; DEPARTMENT OF CORRECTIONS

9 REPORT TO COURT; PROBATION CONDITIONS

10 (a) The Department of Corrections, in consultation with the Court
11 Administrator, shall establish a pilot project to provide the court with a report
12 prior to the sentencing of any defendant to a term of probation for a felony
13 pursuant to 28 V.S.A. § 205. The report shall be designed to assist the court in
14 setting probation conditions and shall include the defendant’s risk and needs
15 assessment results, mental health and substance use disorder screening results,
16 and criminal history.

17 (b) The Department and the Court Administrator shall jointly select one or
18 two units in the Criminal Division for participation in the pilot project
19 established by this section. On or before December 1, 2022, the Department
20 shall report the results of the pilot project to the Joint Legislative Committee

1 on Justice Oversight. The report shall recommend whether the pilot project
2 should be made permanent throughout the State.

3 Sec. 2. 28 V.S.A. § 724 is amended to read:

4 § 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

5 FURLOUGH

6 * * *

7 (c) Appeal.

8 (1) An offender whose community supervision furlough status is
9 revoked or interrupted for 90 days or longer for a technical violation shall have
10 the right to appeal the Department's determination to the Civil Division of the
11 Superior Court in accordance with Rule 74 of the Vermont Rules of Civil
12 Procedure. ~~The appeal shall be based on a de novo review of the record. The~~
13 ~~appellant may offer testimony, and, in its discretion for good cause shown, the~~
14 ~~court may accept additional evidence to supplement the record~~ The notice of
15 appeal filed pursuant to Rule 74 shall include a certification that the court has
16 subject matter jurisdiction. The Department, through the Office of the
17 Vermont Attorney General, shall file any objections to the notice of appeal
18 within 14 days, which shall stay the filing of the record on appeal until the
19 court issues an order on the Department's objection. The appellant shall have
20 the burden of proving by a preponderance of the evidence that the Department

1 abused its discretion in imposing a furlough revocation or interruption for 90
2 days or longer pursuant to subsection (d) of this section.

3 (2) An appeal filed pursuant to this subsection shall be limited to
4 determine whether the decision to interrupt or revoke an offender’s community
5 supervision furlough status was an abuse of discretion by the Department
6 based on the criteria set forth in subdivision (d)(2) of this section. The length
7 of interruption or revocation shall not be a consideration in the abuse of
8 discretion determination.

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

16 (d) Technical violations.

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

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

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

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

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

9 Sec. 3. EFFECTIVE DATE

10 This act shall take effect on passage.

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18 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE