

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. 28 V.S.A. § 724 is amended to read:

9 § 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

10 FURLOUGH

11 * * *

12 (c) Appeal.

13 (1) An offender whose community supervision furlough status is
14 revoked or interrupted for 90 days or longer for a technical violation shall have
15 the right to appeal the Department’s determination to the Civil Division of the
16 Superior Court in accordance with Rule 74 of the Vermont Rules of Civil
17 Procedure. ~~The appeal shall be based on a de novo review of the record. The~~
18 ~~appellant may offer testimony, and, in its discretion for good cause shown, the~~
19 ~~court may accept additional evidence to supplement the record~~ The notice of
20 appeal filed pursuant to Rule 74 shall include a certification that the court has
21 subject matter jurisdiction. The Department, through the Office of the

1 Vermont Attorney General, shall file any objections to the notice of appeal
2 within 14 days, which shall stay the filing of the record on appeal until the
3 court issues an order on the Department’s objection. The appellant shall have
4 the burden of proving by a preponderance of the evidence that the Department
5 abused its discretion in imposing a furlough revocation or interruption for 90
6 days or longer pursuant to subsection (d) of this section.

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

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15 offender’s furlough status was revoked or interrupted or the unit in which the
16 offender is detained after the offender’s furlough status was revoked or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

20 (d) Technical violations.

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

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

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

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

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

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on passage.

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2 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE