

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~~ 180 days or longer for a technical violation shall
15 have the right to appeal the Department’s determination to the Civil Division
16 of the Superior Court in accordance with Rule 74 of the Vermont Rules of
17 Civil Procedure. ~~The appeal shall be based on a de novo review of the record.~~
18 ~~The appellant may offer testimony, and, in its discretion for good cause shown,~~
19 ~~the court may accept additional evidence to supplement the record~~ The notice
20 of appeal filed pursuant to Rule 74 shall include a certification that the court
21 has 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~~ committed clear error in imposing a furlough revocation
6 or interruption for ~~90~~ 180 days or longer pursuant to subsection (d) of this
7 section.

8 (2) An appeal filed pursuant to this subsection shall be limited to
9 determine whether the decision to interrupt or revoke an offender’s community
10 supervision furlough status was clear error by the Department based on the
11 criteria set forth in subdivision (d)(2) of this section.

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14 offender’s furlough status was revoked or interrupted or the unit in which the
15 offender is detained after the offender’s furlough status was revoked or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

19 (d) Technical violations.

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

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

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

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

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

12 Sec. 2. EFFECTIVE DATE

13 This act shall take effect on passage.

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18 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE