

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. If
20 additional evidence is accepted by the court, the Department, through the
21 Office of the Vermont Attorney General, shall have the opportunity to present

1 rebuttal evidence, including testimony, for the court’s consideration. The
2 notice of appeal filed pursuant to Rule 74 shall include a certification that the
3 court has subject matter jurisdiction. The Department shall file an objection to
4 subject matter jurisdiction within 14 days, which shall stay the filing of the
5 record on appeal until the court issues an order on the Department’s objection.

6 The appellant shall have the burden of proving by a preponderance of the
7 evidence that the Department abused its discretion in imposing a furlough
8 revocation or interruption for ~~90~~ 180 days or longer pursuant to subsection (d)
9 of this section.

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

16 (3) An appeal filed pursuant to this subsection shall be brought in the
17 unit of the Superior Court in which the offender resided at the time that the
18 offender’s furlough status was revoked or interrupted or the unit in which the
19 offender is detained after the offender’s furlough status was revoked or
20 interrupted. If an appeal is filed pursuant to this subsection in a unit lacking

1 proper venue, the court, on its own motion or on timely motion of a party to
2 the appeal, may transfer the appeal to a unit having proper venue.

3 (d) Technical violations.

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

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

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

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

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

17 Sec. 2. APPLICABILITY

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

21 (1) 28 V.S.A. § 724(c)(2) (scope of review);

- 1 (2) 28 V.S.A. § 724 (c)(3) (venue);
- 2 (3) 28 V.S.A. § 724(d)(2)(B) and (C) (abuse of discretion exceptions); and
- 3 (4) the provisions of 28 V.S.A. § 724(c)(1) related to rebuttal evidence
- 4 presented by the Department and subject matter certification and objection.
- 5 (b) An appeal filed on or after the effective date of this act shall be
- 6 reviewed under the 180-day interruption or revocation period provided for 28
- 7 V.S.A. § 924(c)(1) and (d)(2).

8 Sec. 3. EFFECTIVE DATE

9 This act shall take effect on passage.

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14 (Committee vote: _____)

15

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Representative _____

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FOR THE COMMITTEE