

1 S.127

2 An act relating to the procedures and review of community supervision
3 furlough revocation or interruption appeals.

4 The House proposes to the Senate to amend the bill by striking all after the
5 enacting clause and inserting in lieu thereof the following:

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

7 § 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

8 FURLOUGH

9 * * *

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

15 (c) Appeal.

16 (1) An offender whose community supervision furlough status is
17 revoked or interrupted for 90 180 days or longer for a technical violation shall
18 have the right to appeal the Department's determination to the Civil Division
19 of the Superior Court in accordance with Rule 74 of the Vermont Rules of
20 Civil Procedure. The appeal shall be based on a de novo review of the record.
21 The appellant may offer testimony, and, in its discretion for good cause shown,
22 the court may accept additional evidence to supplement the record. If

1 additional evidence is accepted by the court, the Department, through the
2 Office of the Vermont Attorney General, shall have the opportunity to present
3 rebuttal evidence, including testimony, for the court's consideration. The
4 notice of appeal filed pursuant to Rule 74 shall include a certification that the
5 court has subject matter jurisdiction. The Department shall file an objection to
6 subject matter jurisdiction within 14 days, which shall stay the filing of the
7 record on appeal until the court issues an order on the Department's objection.
8 The appellant shall have the burden of proving by a preponderance of the
9 evidence that the Department abused its discretion in imposing a furlough
10 revocation or interruption for **90** ~~180~~ days or longer pursuant to subsection (d)
11 of this section.

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

18 (3) An appeal filed pursuant to this subsection shall be brought in the
19 unit of the Superior Court in which the offender resided at the time that the
20 offender's furlough status was revoked or interrupted or the unit in which the
21 offender is detained after the offender's furlough status was revoked or

1 interrupted. If an appeal is filed pursuant to this subsection in a unit lacking
2 proper venue, the court, on its own motion or on timely motion of a party to
3 the appeal, may transfer the appeal to a unit having proper venue.

4 (d) Technical violations.

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

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

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

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

16 (C) the Commissioner has issued a warrant for the arrest of an
17 offender because the offender absconded from furlough. The offender’s
18 violation is absconding from community supervision furlough. As used in this
19 subdivision, “absconding” means:

20 (i) the offender has not met supervision requirements, cannot be
21 located with reasonable efforts, and has not made contact with Department

1 staff within three days if convicted of a listed crime as defined in 13 V.S.A.

2 § 5301(7) or seven days if convicted of a crime not listed in 13 V.S.A.

3 § 5301(7);

4 (ii) the offender flees from Department staff or law

5 enforcement; or

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

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

8 § 123. DEPARTMENT OF CORRECTIONS MONITORING COMMISSION

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

18 * * *

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

20 (1) Provide advice and counsel to the Commissioner of Corrections in
21 carrying out the Commissioner's responsibilities at the Department of

1 Corrections to ~~monitor~~ review the reporting of sexual misconduct, ~~oversee~~ the
2 ~~implementation of~~ adherence to the Department's anti-retaliation policy, ~~create~~
3 the transparency and ~~implement~~ implementation of policies relating to
4 misconduct, and ~~review the~~ disciplinary actions policies.

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

16 * * *

17 (3) Monitor the Department in the following areas:

18 * * *

19 (F) ~~investigations of~~ compliance with the policies, procedures, or
20 directives governing employee misconduct; investigations; the movement of
21 contraband in facilities; threats to personal safety; and the Department's

1 response to major events that occur in the Department of Corrections;
2 ~~including the death of an individual in the custody of the Commissioner of~~
3 ~~Corrections and the escape of an individual from a Department facility or~~
4 ~~Department custody; and~~

5 * * *

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

10 (g) Commissioner of Correction's duties.

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

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

17 * * *

18 (i) Confidentiality. Any information or report related to employee or
19 incarcerated individual misconduct or discipline that is provided to the
20 Commission shall be in a form that does not include personally identifiable
21 information of any of the parties to the alleged misconduct and does not

1 disclose any information that is required to be kept confidential pursuant to
2 applicable State and federal law or any applicable collective bargaining or
3 employment contract.

4 (j) Definition.

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

9 Sec. 3. APPLICABILITY

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

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

16 (2) 28 V.S.A. § 724(c)(3) (venue).

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

20 Sec. 4. EFFECTIVE DATE

21 This act shall take effect on passage.

1 and that after passage the title of the bill be amended to read: “An act
2 relating to clarifying community supervision furlough appeals and the powers
3 of the Corrections Monitoring Commission”

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10 (Committee vote: _____)

11

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Representative _____

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FOR THE COMMITTEE