

TIMOTHY LUEDERS-  
DUMONT, ESQ.  
EXECUTIVE DIRECTOR

PHONE: (802) 828-2891



110 State Street  
Montpelier, VT  
05633-6401

FAX: (802) 828-2881

STATE OF VERMONT  
**OFFICE OF THE EXECUTIVE DIRECTOR**  
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

To: House Committee on Judiciary  
Fr: Kim McManus, Legislative and Policy Attorney  
Department of State's Attorneys and Sheriffs  
Re: S. 109; Miscellaneous Judiciary Bill Requests  
Date: April 9, 2025

The Department of State's Attorneys and Sheriffs requests that the House Committee on Judiciary consider the following additions to S.109:

- I. That the proposed definition of recidivism in H. 410 is included in S.109; or
  - a. If disinclined, at this time, to change the definition of recidivism in 28 V.S.A. § 4, then rename the current definition as 're-incarceration'; and
- II. Provide a definition for 'Disrupt the prosecution' in 13 V.S.A. § 7575.

**I. Definition of Recidivism**

While the Department appreciates that changing the definition of recidivism in 28 V.S.A. § 4 does not solve a myriad of issues concerning criminal justice data collection and analysis in Vermont, SAS maintains that the current definition – tying the use of the term "recidivism" to incarceration and re-incarceration – is misleading for the public, lawmakers, victims of crimes, and contributes to inconsistent testimony as well as nearly constant misuse of the term recidivism in the legal field and in common conversation.

**Issue:**

At present the Department of Corrections calculates recidivism (recidivism dashboard) pursuant to Act 41 (2011) Section 5 (see 28 V.S.A. § 4) using the following definition:

"The Department shall calculate the rate of recidivism based upon offenders who are sentenced to more than one year of incarceration who, after release from incarceration, return to prison within three years for a conviction for a new offense or a violation of supervision resulting, and the new incarceration sentence or time served on the violation is at least 90 days."

This document is submitted to the Chair of the House Committee on Judiciary for discussion purposes. Recommendations and language are subject to change.

Thus, “recidivism” under Title 28 does not include those individuals released or convicted each year with a shorter “jail” sentence of one year or less nor does the definition include those convicted of a crime who do not serve time in an incarcerative setting.

There is a definitional disconnect between a technical definition of a term, under Vermont law, and the way that term is likely understood by Vermonters. Vermont’s current definition excludes instances of criminal conduct and incarceration that people living in the real world would call recidivism. Under the current definition, a person could commit 10 instances of retail theft within a calendar year, be convicted of each one separately, and be sentenced to probation sentences or 1–2-day sentences on each offense—none of which would fall under the current, flawed and misleading, definition of “recidivism.”

### **Solutions:**

28 V.S.A. § 4 should be deleted:

~~The Department shall calculate the rate of recidivism based upon offenders who are sentenced to more than one year of incarceration who, after release from incarceration, return to prison within three years for a conviction for a new offense or a violation of supervision resulting, and the new incarceration sentence or time served on the violation is at least 90 days.~~

And replaced with:

“The Department shall calculate the rate of recidivism based upon offenders who are convicted of a criminal offense after receiving a criminal conviction for a previous crime”

- a. **If the new definition of recidivism is not adopted this session, SAS would recommend, as a half-measure, replacing the word “Recidivism” with the term, “Re-Incarceration” in 28 V.S.A. § 4, Standard measure of ~~recidivism~~ Re-Incarceration**

“The Department shall calculate the rate of ~~recidivism~~ re-incarceration based upon offenders who are sentenced to more than one year of incarceration who, after release from incarceration, return to prison within three years for a conviction for a new offense or a violation of supervision resulting, and the new incarceration sentence or time served on the violation is at least 90 days.”

**Immediate Impact:** “Recidivism Dashboard” on DOC’s website will be renamed “Re-incarceration Dashboard” – DOC would not need to change any of their data collection practices, but the change would reflect what the data is tracking. minimizing confusion.

NOTE: If DOC responds that it is unable to provide the data as contemplated under the solutions suggested above, the Legislature could, this session, enact the alternative solution, and set a deadline for an overhaul of the larger issue and full-scale recidivism data tracking by July 2027. It is our understanding that the Judiciary’s data concerning convictions combined with DOC’s list of those sentenced and serving terms of incarceration or those under DOC’s supervision (probation, etc.) would assist the State at arriving at a much more accurate list. For individuals convicted who do not interact with DOC (fine only or conviction only penalties), the list could be provided to DOC by the Judiciary for data reporting regarding recidivism.

This document is submitted to the Chair of the House Committee on Judiciary for discussion purposes. Recommendations and language are subject to change.

Or the Legislature could request that the Judiciary publish yearly data on recidivism based on a comparison of previously convicted persons and those persons who have been subsequently convicted, absent DOC. Meanwhile, DOC could, under the new definition of re-incarceration, continue to track re-incarceration, as contemplated above.

## **II. Bail Revocation**

The Department of State's Attorneys and Sheriffs requests that 13 V.S.A. § 7575 (a)(2) be amended as proposed in H. 409. Namely, that "impedes" be replaced by "disrupts." We further recommend that if this change is implemented that the following language be added to 13 V.S.A. § 7575:

"Disrupt the prosecution"

In determining whether the prosecution has been disrupted, the judicial officer shall consider the following, in addition to any other factors: the number of times Defendant has failed to appear, whether the Defendant has engaged in disruptive behavior in court which requires Defendant's case to be rescheduled, whether engaging in criminal behavior or violating a condition of release while released on any combination of bail, recognizance, or conditions of release has caused unnecessary delay in the progress of the underlying case; or whether engaging in criminal behavior or violating a condition of release while released on any combination of bail, recognizance, or conditions of release has modified or influenced the testimony or availability of a witness or evidence in the underlying case.