

I. **Problem: Definition of Recidivism and Related Issues**

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

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.¹

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 the 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 definition of “recidivism.”

II. **Solution and Suggested Language Concerning**

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.~~

After deletion of 28 V.S.A. § 4, new language (*see below for drafting starting point*) should either be inserted in Title 28 or inserted into the appropriate title with a cross-reference to any other statute relating to how recidivism is calculated and reported.

The following definition of recidivism could be adopted by relevant departments and agencies pursuant to statute, and could be calculated by VCIC or any other appropriate entity, for individuals who have been convicted of a crime:

¹ As the Department of Corrections has noted the definition of a "prison sentence" is sentenced to serve (maximum) more than one year (US Department of Justice, Bureau of Justice Statistics).

New Recidivism Definition:

For individuals who have been convicted of a crime:

- Class 1 recidivism: less than 2 years elapse from the time of sentencing before individual is convicted of a new offense;
- Class 2 recidivism: less than 5 years elapse from the time of sentencing before individual is convicted of a new offense; and
- Class 3 recidivism: less than 10 years elapse from the time of sentencing before individual is convicted of a new offense; and

Desistence:

“Desistence” has an existing definition, under 28 V.S.A. § 125.² At this time, SAS does not believe that the 28 V.S.A. § 125 needs to be deleted or amended. That said SAS would recommend that the legislature adopt a class system concerning desistence for the purposes of tracking positive trends:

- Class 1 desistence: less than 12 months elapse from the time of sentencing before a judicial officer finds probable cause³ for a new offense;
- Class 2 desistence: less than 2 years elapse from the time of sentencing before a judicial officer finds probable cause for a new offense; and,
- Class 3 desistence: less than 5 years elapse from the time of sentencing before a judicial officer finds probable cause for a new offense.

Repeat Violent Offender:

SAS would further recommend that that the Legislature consider creating a statutory regime to assist in the tracking of convictions related to repeated instances of violent crime,⁴ pursuant to a “Repeat Violent Offender” definition:

- Class 1 repeat violence: less than 2 years elapse from the time of sentencing before individual is convicted of a listed offense;
- Class 2 repeat violence: less than 5 years elapse from the time of sentencing before individual is convicted of a listed offense; and,
- Class 3 repeat violence: less than 10 years elapse from the time of sentencing before individual is convicted of a listed offense.

² Current definition: “‘Desistence’ means the process by which criminality, or the individual risk for antisocial conduct, declines over the life-course of the individual, generally after adolescence.” 28 V.S.A. § 125.

³ Whether desistence should be associated with a judicial finding of probable cause versus a conviction would be a question of policy for the Vermont Legislature.

⁴ While “listed” offenses are not a proxy for all violent crime, tracking listed crimes could assist in understanding violent crime trends in Vermont.