

1 S.225

2 Introduced by Senator Vyhovsky

3 Referred to Committee on

4 Date:

5 Subject: Crimes; sentencing; decarceration

6 Statement of purpose of bill as introduced: This bill proposes to decrease the
7 population of incarcerated individuals by repealing Vermont's habitual
8 offender statute, capping all criminal sentences at a maximum of 20 years,
9 prohibiting an interruption or revocation of any type of community supervision
10 for technical violations, and requiring minority impact statements prior to any
11 new criminal law being passed.

12 An act relating to criminal sentencing and decarceration

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 13 V.S.A. § 11 is amended to read:

15 § 11. ~~HABITUAL CRIMINALS~~

16 ~~A person who, after having been three times convicted within this State of~~
17 ~~felonies or attempts to commit felonies, or under the law of any other state,~~
18 ~~government, or country, of crimes which, if committed within this State, would~~
19 ~~be felonious, commits a felony other than murder within this State, may be~~

1 ~~sentenced upon conviction of such fourth or subsequent offense to~~
2 ~~imprisonment up to and including life. [Repealed.]~~

3 Sec. 2. 13 V.S.A. § 15 is added to read:

4 § 15. MINORITY IMPACT STATEMENTS REQUIRED

5 (a) Definition. As used in this section, “covered bill” means a bill that is
6 referred to the Senate Committee on Judiciary or the House Committee on
7 Judiciary that:

8 (1) establishes a new State crime or offense;

9 (2) could increase or decrease the number of persons incarcerated in
10 State correctional facilities;

11 (3) modifies a crime, offense, or the penalties associated with a crime
12 or offense established under current State law; or

13 (4) modifies procedures under current State law for pretrial detention,
14 sentencing, and all forms of community supervision.

15 (b) Minority impact statements on legislation. The State Auditor, in
16 consultation with the Vermont Sentencing Commission and the Court
17 Administrator, shall prepare and submit a minority impact statement to the
18 General Assembly on a covered bill prior to the consideration of such bill on
19 the floor of the House of Representatives or of the Senate.

20 (c) Minority impact statement. A minority impact statement shall include:

1 (1) detailed projections of the impact of the covered bill on the
2 populations of pretrial detainees, incarcerated individuals, and individuals
3 subject to any form of community supervision, including:

4 (A) whether the covered bill would have a negative impact, no
5 impact, a positive impact, a minimal impact, or an unknown impact on such
6 populations;

7 (B) the impact of the covered bill on correctional facilities and
8 services, including any changes to the operational costs of correctional
9 facilities and any decrease or increase in the population of individuals
10 incarcerated in correctional facilities; and

11 (C) a statistical analysis of how the covered bill would impact pretrial
12 detainees, incarcerated individuals, and individuals subject to any form of
13 community supervision, disaggregated by race, ethnicity, disability, gender,
14 and sexual orientation, if known;

15 (2) an estimate of the fiscal impact of the covered bill on State
16 expenditures, including expenditures on the construction and operation of
17 correctional facilities for the current fiscal year and the five succeeding fiscal
18 years;

19 (3) an analysis of any other significant factor affecting the costs of the
20 covered bill and its impact on the operations of the components of the State's
21 criminal justice system; and

1 (4) a detailed and comprehensive statement of the methodologies and
2 assumptions used in preparing the minority impact statement.

3 (d) Annual assessment. Annually, on or before November 15, the State
4 Auditor shall prepare and submit to the Senate Committee on Judiciary, the
5 House Committees on Judiciary and on Corrections and Institutions, and the
6 Joint Legislative Justice Oversight Committee a minority impact assessment
7 reflecting the cumulative effect of all relevant changes in the law taking effect
8 during the preceding calendar year.

9 (e) Public availability. Not later than 30 days after preparing a minority
10 impact statement pursuant to subsection (b) of this section, the State Auditor
11 shall publish the statement on the website of the Office of the Vermont State
12 Auditor.

13 Sec. 3. 13 V.S.A. § 2405 is amended to read:

14 § 2405. KIDNAPPING

15 (a) A person commits the crime of kidnapping if the person:

16 (1) knowingly restrains another person with the intent to:

17 (A) hold the restrained person for ransom or reward; ~~or~~

18 (B) use the restrained person as a shield or hostage; ~~or~~

19 (C) inflict bodily injury upon the restrained person or place the

20 restrained person or a third person in fear that any person will be subjected to

21 bodily injury; ~~or~~

1 (D) sexually assault the restrained person or place the restrained
2 person or a third person in fear that any person will be sexually assaulted; or

3 (E) facilitate the commission of another crime or flight thereafter; or

4 (2) not being a relative of a person under ~~the age of 16~~ years of age,
5 knowingly restrains that person, without the consent of the person's custodian,
6 with the intent to keep the person from ~~his or her~~ the person's lawful custodian
7 for a substantial period.

8 (b) Kidnapping is punishable by a maximum sentence of ~~life~~ imprisonment
9 of not more than 20 years or a fine of not more than \$50,000.00, or both. It is,
10 however, an affirmative defense ~~which~~ that reduces the penalty to
11 imprisonment for not more than ~~30~~ 10 years or a fine of not more than
12 \$50,000.00, or both, that the defendant voluntarily caused the release of the
13 victim alive in a safe place before arraignment without having caused serious
14 bodily injury to the victim.

15 Sec. 4. 13 V.S.A. chapter 53 is amended to read:

16 CHAPTER 53. HOMICIDE

17 * * *

18 § 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

19 (a)(1) The punishment for murder in the first degree shall be imprisonment
20 for:

1 ~~(A) a minimum term of not less than 35 years and a maximum term~~
2 ~~of life; or~~

3 ~~(B) life without the possibility of parole not more than 20 years.~~

4 (2) The punishment for murder in the second degree shall be
5 imprisonment for:

6 ~~(A) a minimum term of not less than 20 years and a maximum term~~
7 ~~of life; or~~

8 ~~(B) life without the possibility of parole not more than 20 years.~~

9 (3) Notwithstanding any other provision of law, this subsection shall
10 apply only if the murder was committed on or after the effective date of this
11 act.

12 ~~(b) The punishment for murder in the first degree shall be imprisonment for~~
13 ~~life and for a minimum term of 35 years unless a jury finds that there are~~
14 ~~aggravating or mitigating factors which justify a different minimum term. If~~
15 ~~the jury finds that the aggravating factors outweigh any mitigating factors, the~~
16 ~~court may set a minimum term longer than 35 years, up to and including life~~
17 ~~without parole. If the jury finds that the mitigating factors outweigh any~~
18 ~~aggravating factors, the court may set a minimum term at less than 35 years but~~
19 ~~not less than 15 years.~~

20 ~~(c) The punishment for murder in the second degree shall be imprisonment~~
21 ~~for life and for a minimum term of 20 years unless a jury finds that there are~~

1 ~~aggravating or mitigating factors which justify a different minimum term. If~~
2 ~~the jury finds that the aggravating factors outweigh any mitigating factors, the~~
3 ~~court may set a minimum term longer than 20 years, up to and including life~~
4 ~~without parole. If the jury finds that the mitigating factors outweigh any~~
5 ~~aggravating factors, the court may set a minimum term at less than 20 years but~~
6 ~~not less than 10 years.~~

7 (d)(b)(1)(A) Before the court sentences a defendant for first or second
8 degree murder, a jury shall consider the aggravating and mitigating factors set
9 forth in subsections (e)(c) and (f)(d) of this section. The court shall allow the
10 parties to present evidence and argument concerning the aggravating and
11 mitigating factors and may empanel a new jury to consider them or conduct the
12 hearing before the same jury that considered the guilt of the defendant.

13 (B) The parties shall file notice of intent to present evidence
14 regarding specific aggravating and mitigating factors about which the parties
15 have knowledge not less than 60 days before the hearing. A party may not
16 present evidence on the presence of that aggravating or mitigating factor unless
17 notice has been provided as required by this subdivision.

18 (C) The jury shall make findings concerning aggravating and
19 mitigating factors and determine whether the aggravating factors outweigh the
20 mitigating factors or the mitigating factors outweigh the aggravating factors.

1 The findings shall be based on the evidence on the criminal charges presented
2 to the jury at the sentencing hearing and at the trial.

3 (D) The burden shall be on the State to prove beyond a reasonable
4 doubt the presence of aggravating factors or the absence of mitigating factors
5 and to prove beyond a reasonable doubt that the aggravating factors outweigh
6 the mitigating factors.

7 (2) After the jury renders a verdict on the aggravating and mitigating
8 factors, the court shall allow the parties to present arguments concerning
9 sentencing recommendations. The court shall make written findings of fact
10 summarizing the offense and the defendant's participation in it. The findings
11 shall be based on the evidence taken at trial, the evidence presented on
12 aggravating and mitigating factors at the sentencing hearing, and information
13 from the presentence report. ~~The court shall impose a sentence consistent with~~
14 ~~subsection (b) or (c) of this subsection and with the jury's findings concerning~~
15 ~~aggravating and mitigating factors.~~

16 (e)(c) Aggravating factors shall include the following:

17 (1) The murder was committed while the defendant was in custody
18 under sentence of imprisonment.

19 (2) The defendant was previously convicted of a felony involving the
20 use of violence to a person.

1 (3) The murder was committed while the defendant was engaged in the
2 commission of, or in an attempt to commit, or in immediate flight after
3 committing a felony.

4 (4) The victim of the murder was particularly weak, vulnerable, or
5 helpless.

6 (5) The murder was particularly severe, brutal, or cruel.

7 (6) The murder involved multiple victims.

8 (7) The murder was random, predatory, or arbitrary in nature.

9 (8) Any other factor that the State offers in support of a greater
10 minimum sentence.

11 ~~(f)~~(d) Mitigating factors shall include the following:

12 (1) The defendant had no significant history of prior criminal activity
13 before sentencing.

14 (2) The defendant was suffering from a mental or physical disability or
15 condition that significantly reduced ~~his or her~~ the defendant's culpability for
16 the murder.

17 (3) The defendant was an accomplice in the murder committed by
18 another person and ~~his or her~~ the defendant's participation was relatively
19 minor.

20 (4) The defendant, because of youth or old age, lacked substantial
21 judgment in committing the murder.

1 (1) The murder was committed while the defendant was in custody
2 under sentence for murder or aggravated murder.

3 (2) The defendant had, prior to commencement of the trial for
4 aggravated murder, been convicted of another aggravated murder or murder in
5 any jurisdiction in the United States and territories.

6 (3) At the time of the murder, the defendant also committed another
7 murder.

8 (4) At the time of the murder, the defendant knowingly created a great
9 risk of death to another person or persons.

10 (5) The murder was committed for the purpose of avoiding or
11 preventing lawful arrest by a law enforcement officer of any person, or
12 effecting an escape by any person from lawful custody of a law enforcement
13 officer.

14 (6) The murder was committed by a person hired for such purpose in
15 return for anything of value. Both the person hired and the person hiring ~~him~~
16 ~~or her~~ the person are guilty of aggravated murder.

17 (7) The victim of the murder was known by the person to be a
18 firefighter, a member of emergency medical personnel as defined in 24 V.S.A.
19 § 2651(6), a person employed in any capacity in or about a correctional
20 facility, or a law enforcement officer; and was performing ~~his or her~~ the
21 person's official duties.

1 (2) recruit, entice, harbor, transport, provide, or obtain a person through
2 force, fraud, or coercion for the purpose of having the person engage in a
3 commercial sex act;

4 (3) compel a person through force, fraud, or coercion to engage in a
5 commercial sex act;

6 (4) benefit financially or by receiving anything of value from
7 participation in a venture, knowing that force, fraud, or coercion was or will be
8 used to compel any person to engage in a commercial sex act as part of the
9 venture;

10 (5) subject a person to labor servitude;

11 (6) recruit, entice, harbor, transport, provide, or obtain a person for the
12 purpose of subjecting the person to labor servitude; or

13 (7) benefit financially or by receiving anything of value from
14 participation in a venture, knowing that a person will be subject to labor
15 servitude as part of the venture.

16 (b) A person who violates subsection (a) of this section shall be imprisoned
17 for ~~a term up to and including life~~ not more than 20 years or fined not more
18 than \$500,000.00, or both.

19 (c)(1)(A) A person who is a victim of sex trafficking in violation of
20 subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be
21 the subject of a delinquency petition based on chapter 59 (lewdness and

1 prostitution) or 63 (obscenity) of this title for any conduct committed as a
2 victim of sex trafficking.

3 (B) Notwithstanding any other provision of law, a person under ~~the~~
4 ~~age of 18 years of age~~ shall be immune from prosecution in the Criminal
5 Division of the Superior Court for a violation of section 2632 of this title
6 (prohibited acts; prostitution), but may be treated as a juvenile under 33 V.S.A.
7 chapter 52 or referred to the Department for Children and Families for
8 treatment under 33 V.S.A. chapter 53.

9 (2) If a person who is a victim of sex trafficking in violation of
10 subdivisions 2652(a)(1)–(4) of this title is prosecuted for any offense or is the
11 subject of any delinquency petition other than a violation of chapter 59
12 (lewdness and prostitution) or 63 (obscenity) of this title that arises out of the
13 sex trafficking or benefits the sex trafficker, the person may raise as an
14 affirmative defense that ~~he or she~~ the person committed the offense as a result
15 of force, fraud, or coercion by a sex trafficker.

16 (d) In a prosecution for a violation of this section, the victim’s alleged
17 consent to the human trafficking is immaterial and shall not be admitted.

18 (e) If a person who is a victim of human trafficking is under 18 years of age
19 at the time of the offense, the State may treat the person as the subject of a
20 child in need of care or supervision proceeding.

1 § 2653. AGGRAVATED HUMAN TRAFFICKING

2 (a) A person commits the crime of aggravated human trafficking if the
3 person commits human trafficking in violation of section 2652 of this title
4 under any of the following circumstances:

5 (1) the offense involves a victim of human trafficking who is a child
6 under ~~the age of~~ 18 years of age;

7 (2) the person has previously been convicted of a violation of section
8 2652 of this title;

9 (3) the victim of human trafficking suffers serious bodily injury or
10 death; or

11 (4) the actor commits the crime of human trafficking under
12 circumstances that constitute the crime of sexual assault as defined in
13 section 3252 of this title, aggravated sexual assault as defined in section 3253
14 of this title, or aggravated sexual assault of a child as defined in section 3253a
15 of this title.

16 (b) A person who violates this section shall be imprisoned not ~~less than~~
17 more than 20 years ~~and a maximum term of life~~ or fined not more than
18 \$100,000.00, or both.

19 (c) The provisions of this section do not limit or restrict the prosecution for
20 murder or manslaughter.

21 * * *

1 (c) No person shall engage in a sexual act with a child who is under ~~the age~~
2 ~~of~~ 16 years of age, except:

3 (1) where the persons are married to each other and the sexual act is
4 consensual; or

5 (2) where the person is less than 19 years ~~old~~ of age, the child is at least
6 15 years ~~old~~ of age, and the sexual act is consensual.

7 (d) No person shall engage in a sexual act with a child who is under ~~the age~~
8 ~~of~~ 18 years of age and is entrusted to the actor's care by authority of law or is
9 the actor's child, grandchild, foster child, adopted child, or stepchild.

10 (e) No person shall engage in a sexual act with a child under ~~the age of~~
11 16 years of age if:

12 (1) the victim is entrusted to the actor's care by authority of law or is the
13 actor's child, grandchild, foster child, adopted child, or stepchild; or

14 (2) the actor is at least 18 years of age, resides in the victim's household,
15 and serves in a parental role with respect to the victim.

16 (f)(1) A person who violates subsection (a), (b), (d), or (e) of this section
17 shall be imprisoned not less than three years and for a maximum term of ~~life~~
18 not more than 20 years and, in addition, may be fined not more than
19 \$25,000.00.

1 (2) A person who violates subsection (c) of this section shall be
2 imprisoned for not more than 20 years, and, in addition, may be fined not more
3 than \$10,000.00.

4 (g) A person convicted of violating subsection (a), (b), (d), or (e) of this
5 section shall be sentenced under section 3271 of this title.

6 § 3253. AGGRAVATED SEXUAL ASSAULT

7 (a) A person commits the crime of aggravated sexual assault if the person
8 commits sexual assault under any one of the following circumstances:

9 (1) At the time of the sexual assault, the actor causes serious bodily
10 injury to the victim or to another.

11 (2) The actor is joined or assisted by one or more persons in physically
12 restraining, assaulting, or sexually assaulting the victim.

13 (3) The actor commits the sexual act under circumstances ~~which~~ that
14 constitute the crime of kidnapping.

15 (4) The actor has previously been convicted in this State of sexual
16 assault under subsection 3252(a) or (b) of this title or aggravated sexual assault
17 or has been convicted in any jurisdiction in the United States or territories of
18 an offense ~~which~~ that would constitute sexual assault under subsection 3252(a)
19 or (b) of this title or aggravated sexual assault if committed in this State.

1 (5) At the time of the sexual assault, the actor is armed with a deadly
2 weapon and uses or threatens to use the deadly weapon on the victim or on
3 another.

4 (6) At the time of the sexual assault, the actor threatens to cause
5 imminent serious bodily injury to the victim or to another and the victim
6 reasonably believes that the actor has the present ability to carry out the threat.

7 (7) At the time of the sexual assault, the actor applies deadly force to the
8 victim.

9 (8) The victim is under ~~the age of~~ 13 years of age and the actor is at least
10 18 years of age.

11 (9) The victim is subjected by the actor to repeated nonconsensual
12 sexual acts as part of the same occurrence or the victim is subjected to repeated
13 nonconsensual sexual acts as part of the actor's common scheme and plan.

14 (b) A person who commits the crime of aggravated sexual assault shall be
15 imprisoned not less than ~~ten~~ 10 years and a maximum term of ~~life~~ not more
16 than 20 years, and, in addition, may be fined not more than \$50,000.00.

17 (c)(1) Except as provided in subdivision (2) of this subsection, a
18 sentence ordered pursuant to subsection (b) of this section shall include at least
19 a ~~ten~~ 10-year term of imprisonment. The ~~ten~~ 10-year term of imprisonment
20 required by this subdivision shall be served and may not be suspended,
21 deferred, or served as a supervised sentence. The defendant shall not be

1 eligible for probation, parole, furlough, or any other type of early release until
2 the expiration of the five-year or ~~ten~~ 10-year term of imprisonment.

3 (2) The court may depart downwardly from the ~~ten~~ 10-year term of
4 imprisonment required by subsection (b) of this section and impose a lesser
5 term of incarceration if the court makes written findings on the record that the
6 downward departure will serve the interests of justice and public safety,
7 provided that in no event may the court impose a term of incarceration of less
8 than five years.

9 (d) A person convicted of violating this section shall be sentenced under
10 section 3271 of this title.

11 § 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

12 (a) A person commits the crime of aggravated sexual assault of a child if
13 the actor is at least 18 years of age and commits sexual assault against a child
14 under ~~the age of~~ 16 years of age in violation of section 3252 of this title and at
15 least one of the following circumstances exists:

16 (1) At the time of the sexual assault, the actor causes serious bodily
17 injury to the victim or to another.

18 (2) The actor is joined or assisted by one or more persons in physically
19 restraining, assaulting, or sexually assaulting the victim.

20 (3) The actor commits the sexual act under circumstances ~~which~~ that
21 constitute the crime of kidnapping.

1 (4) The actor has previously been convicted in this State of sexual
2 assault under subsection 3252(a) or (b) of this title, aggravated sexual assault
3 under section 3253 of this title, or aggravated sexual assault of a child under
4 this section, or has been convicted in any jurisdiction in the United States or
5 territories of an offense ~~which~~ that would constitute sexual assault under
6 subsection 3252(a) or (b) of this title, aggravated sexual assault under section
7 3253 of this title, or aggravated sexual assault of a child under this section if
8 committed in this State.

9 (5) At the time of the sexual assault, the actor is armed with a deadly
10 weapon and uses or threatens to use the deadly weapon on the victim or on
11 another.

12 (6) At the time of the sexual assault, the actor threatens to cause
13 imminent serious bodily injury to the victim or to another, and the victim
14 reasonably believes that the actor has the present ability to carry out the threat.

15 (7) At the time of the sexual assault, the actor applies deadly force to the
16 victim.

17 (8) The victim is subjected by the actor to repeated nonconsensual
18 sexual acts as part of the same occurrence or the victim is subjected to repeated
19 nonconsensual sexual acts as part of the actor's common scheme and plan.

20 (b) A person who commits the crime of aggravated sexual assault of a child
21 shall be imprisoned for not ~~less than 25 years with a maximum term of life~~

1 more than 20 years, and, in addition, may be fined not more than \$50,000.00.

2 ~~The 25-year~~ Any term of imprisonment required by this subsection shall be
3 served and may not be suspended, deferred, or served as a supervised sentence.

4 The defendant shall not be eligible for probation, parole, furlough, or any other
5 type of early release until the expiration of the ~~25-year~~ term of imprisonment.

6 * * *

7 § 3271. INDETERMINATE ~~LIFE~~ SENTENCE

8 (a) A person who commits one of the following offenses shall be sentenced
9 under this section:

10 (1) Lewd and lascivious conduct with a child, second or subsequent
11 offense, in violation of subdivision 2602(b)(2) of this title.

12 (2) Sexual assault in violation of subsection 3252(a), (b), (d), or (e) of
13 this title.

14 (3) Aggravated sexual assault in violation of section 3253 of this title.

15 (4) Violation of sex offender registry requirements by noncompliant
16 high-risk sex offenders, in violation of subsection 5411d(g) of this title.

17 (b) If a person is sentenced under this section, the person's maximum
18 sentence shall be imprisonment for ~~life~~ not more than 20 years.

19 (c) If a person sentenced under this section receives a sentence that is
20 wholly or partially suspended, sex offender conditions and treatment shall be a
21 condition of the person's probation agreement.

1 (d) If a person sentenced under this section receives a sentence for an
2 unsuspended term of incarceration, the person shall not be released until the
3 person successfully completes all sex offender treatment and programming
4 required by the Department of Corrections, unless the Department determines
5 that the person poses a sufficiently low risk of reoffense to protect the
6 community or that a program can be implemented ~~which~~ that adequately
7 supervises the person and addresses any risk the person may pose to the
8 community.

9 * * *

10 Sec. 7. 28 V.S.A. chapter 5 is amended to read:

11 CHAPTER 5. PROBATION

12 * * *

13 § 201. DEFINITIONS

14 ~~Whenever used in this chapter,~~ As used in this chapter:

15 (1) ~~unless~~ Unless a different meaning plainly is required, “probation”
16 means a procedure under which a respondent, found guilty of a crime upon
17 verdict or plea, is released by the court, without confinement, subject to
18 conditions imposed by the court and subject to the supervision of the
19 Commissioner.

20 (2) “Technical violation” means a violation of conditions of probation
21 that does not constitute a new crime.

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§ 256. GRADUATED SANCTIONS FOR TECHNICAL VIOLATIONS

(a) At any time before the discharge of the probationer or the termination of the period of probation if, in the judgment of the Commissioner, the probationer has violated a condition or conditions of ~~his or her~~ the probationer's probation, other than a condition that the probationer pay restitution to the Department or a technical violation ~~which constitutes a new crime~~, the Commissioner may sanction the probationer in accordance with rules adopted pursuant to subsection (b) of this section. However, no probationer shall be incarcerated except pursuant to the provisions of subchapter 3 of this chapter.

(b) Department of Corrections shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation violations as an alternative to arrest or citation under section 301 of this title.

* * *

§ 301. SUMMONS OR ARREST OF PROBATIONER

At any time before the discharge of the probationer or the termination of the period of probation:

(1) Summons or warrant for arrest. The court may summon the probationer to appear before it or may issue a warrant for ~~his or her~~ the probationer's arrest.

1 (2) Arrest or citation of person on probation. Any correctional officer
2 may arrest a probationer without a warrant if, in the judgment of the
3 correctional officer, the probationer has violated a condition or conditions of
4 ~~his or her~~ the probationer's probation other than a condition that the
5 probationer pay restitution; or may deputize any other law enforcement officer
6 to arrest a probationer without a warrant by giving ~~him or her~~ the probationer a
7 written statement setting forth that the probationer has, in the judgment of the
8 correctional officer, violated a condition or conditions of ~~his or her~~ the
9 probationer's probation other than a condition that the probationer pay
10 restitution. The written statement delivered with the person by the arresting
11 officer to the supervising officer of the correctional facility to which the person
12 is brought for detention shall be sufficient warrant for detaining ~~him or her~~ the
13 person. In lieu of arrest, a correctional officer may issue a probationer a
14 citation to appear for arraignment. In deciding whether to arrest or issue a
15 citation, an officer shall consider whether issuance of a citation will reasonably
16 ensure the probationer's appearance at future proceedings and reasonably
17 protect the public.

18 (3) No right of action. Any probationer arrested and detained in
19 accordance with the provisions of this chapter shall have no right of action
20 against any law enforcement officer, correctional officer, employee of the

1 Department of Corrections, or any other persons because of such arrest and
2 detention.

3 (4) Detention pending hearing for probationer. Pending arraignment for
4 any charge of violation other than for a technical violation, the probationer
5 shall be detained at a correctional facility unless issued a citation by a
6 correctional officer. Thereafter, the court may release the probationer pursuant
7 to 13 V.S.A. § 7554. There shall be no right to bail or release, unless the
8 person is on probation for a nonviolent misdemeanor or nonviolent felony.

9 (5) Release of certain persons on probation for nonviolent offenses.

10 (A) At arraignment, if the court finds that bail or conditions of
11 release will reasonably ensure the probationer's appearance at future
12 proceedings and conditions of release will reasonably protect the public, the
13 court shall release a probationer who is on probation for a nonviolent
14 misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554.

15 (B) As used in this section:

16 (i) "Nonviolent felony" means a felony offense that is not a listed
17 crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual
18 exploitation of children in violation of 13 V.S.A. chapter 64.

19 (ii) "Nonviolent misdemeanor" means a misdemeanor offense that
20 is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving

1 sexual exploitation of children in violation of 13 V.S.A. chapter 64 or
2 13 V.S.A. § 1030.

3 * * *

4 § 303. GROUNDS FOR REVOCATION

5 (a) Probation shall not be revoked unless the probationer violates a
6 condition of ~~his or her~~ the probationer's probation, other than a technical
7 violation, or is convicted of another crime. The violation or conviction shall be
8 both a necessary and a sufficient ground for the revocation of probation.

9 (b) The court shall not revoke probation and order the confinement of the
10 probationer unless the court finds on the basis of the original offense and the
11 intervening conduct of the probationer that:

12 (1) confinement is necessary to protect the community from further
13 criminal activity by the probationer;

14 (2) the probationer is in need of correctional treatment ~~which~~ that can
15 most effectively be provided if ~~he or she~~ the probationer is confined; or

16 (3) it would unduly depreciate the seriousness of the violation if
17 probation were not revoked.

18 * * *

19 Sec. 8. 28 V.S.A. chapter 6 is amended to read:

20 CHAPTER 6. SUPERVISED COMMUNITY SENTENCE

21 * * *

1 § 351. DEFINITIONS

2 As used in this chapter:

3 (1) “Supervised community sentence” means a form of imprisonment to
4 be served outside the walls of a correctional facility, subject to the rules of the
5 Commissioner and subject to revocation and incarceration pursuant to this
6 chapter.

7 (2) “Alternative sentencing program” means a residential or
8 nonresidential program operated by the Department or contracted with public
9 or private agencies to provide any of a range of sanctions, treatment, or control
10 functions, to include: half-way houses, day centers, community work
11 programs, residential treatment centers, individual and group counseling, house
12 arrest, electronic monitoring, and intensive supervision.

13 (3) “Technical violation” means a violation of conditions of supervised
14 community supervision that does not constitute a new crime.

15 * * *

16 § 371. AUTHORITY OF THE PAROLE BOARD

17 If the offender commits an act punishable as a crime, or violates a condition
18 of sentence during the period of supervised community sentence other than a
19 technical violation, the Parole Board may revoke the offender’s service of
20 sentence outside a correctional facility and require the offender to serve all or

1 part of the remaining sentence within a correctional facility, subject to the
2 provisions for parole under chapter 7 of this title.

3 * * *

4 Sec. 9. 28 V.S.A. chapter 7 is amended to read:

5 CHAPTER 7. PAROLE

6 * * *

7 § 402. DEFINITIONS

8 As used in this chapter:

9 (1) “Parole” means the release of an inmate to the community by the
10 Parole Board before the end of the inmate’s sentence subject to conditions
11 imposed by the Board and subject to the supervision and control of the
12 Commissioner. If a court or other authority files a warrant or detainer against
13 an inmate, the Board may release ~~him or her~~ the inmate on parole to answer the
14 warrant and serve any subsequent sentences.

15 (2) “Interview” means an appearance by the inmate at a meeting of the
16 Parole Board.

17 (3) “Review” means an evaluation of an inmate’s records without an
18 appearance by the inmate before the Parole Board.

19 (4) “Technical violation” means a violation of conditions of parole that
20 does not constitute a new crime.

1 § 403. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
2 REGARDING PAROLE

3 The Commissioner is charged with the following powers and
4 responsibilities regarding the administration of parole:

5 (1) To supervise and control persons placed on parole, subject to the
6 rules and orders of the Parole Board as to the conditions of parole. The
7 Commissioner may use electronic monitoring equipment such as global
8 position monitoring, automated voice recognition telephone equipment, and
9 transdermal alcohol monitoring equipment to enable more effective or efficient
10 supervision of individuals placed on parole. Transdermal alcohol monitoring
11 equipment shall be used for such purposes as discouraging persons whose
12 licenses have been suspended for DUI from operating motor vehicles on
13 Vermont highways;

14 (2) To detain for safekeeping at a correctional facility any parolee who
15 allegedly has violated the terms of ~~his or her~~ the parolee's parole other than a
16 technical violation, pending a conference with the Parole Board at its next
17 regularly scheduled meeting, such period of detention not to exceed 30 days;

18 (3) To establish and provide as ~~he or she~~ the Commissioner deems
19 necessary outpatient counseling and treatment services to persons paroled
20 from, or on pre-parole release or conditional release from, confinement within
21 the Department and, in ~~his or her~~ the Commissioner's discretion, to require

1 payment of reasonable fees for such services, if the person is financially able to
2 make the payment;.

3 (4) To establish and maintain a register of individuals who ask to be
4 notified of the parole interview or review of an inmate by the Parole Board.
5 The register shall constitute a confidential record that shall only be disclosed to
6 persons within the Department specifically designated by the Commissioner;.

7 (5) To provide written notification of the date, time, and place of a
8 parole interview or review of an inmate by the Parole Board to an individual
9 who asks to be notified of the parole interview or review. At least 30 days
10 prior to the date of the interview or review, the notice shall be sent by first
11 class mail, or by another most appropriate method, to the last address provided
12 to the Department by the individual. A copy of the notice shall be provided to
13 the Parole Board prior to the interview or review. Failure of the Department to
14 provide the notice or provide it in a timely manner shall not affect the validity
15 of proceedings conducted by the Parole Board.

16 * * *

17 § 551. ISSUANCE OF WARRANT; ARREST WITHOUT A WARRANT;
18 CONFINEMENT PENDING HEARING; AUTHORITY OF
19 CORRECTIONAL OFFICERS AND LAW ENFORCEMENT
20 OFFICERS

1 (a) Parole Board warrant. The Board may issue a warrant for the arrest of a
2 parolee, or may issue an order, to be served personally upon the parolee,
3 requiring ~~him or her~~ the parolee to appear before the Board, if the Board has
4 reason to believe that a violation of parole has occurred. The warrant shall
5 authorize any law enforcement officers and any correctional officers to return
6 the person to the custody of a correctional facility.

7 (b) Fugitive from justice. A parolee for whose return a warrant has been
8 issued by the Board, if it is found that a warrant cannot be served, shall be
9 considered to be a fugitive from justice or to have fled from justice.

10 (c) Arrest of person on parole. Any correctional officer designated by the
11 Commissioner may arrest a parolee without a warrant if, in the judgment of the
12 correctional officer, the ~~person~~ parolee has violated a condition of ~~his or her~~
13 parole; or may deputize any other law enforcement officer to do so by giving
14 ~~him or her~~ the law enforcement officer a written statement setting forth that the
15 parolee has, in the judgment of the correctional officer, violated a condition or
16 conditions of ~~his or her~~ the parolee's parole. The written statement delivered
17 with the person by the arresting officer to the supervising officer of the
18 correctional facility to which the person is brought for detention shall be
19 sufficient warrant for detaining ~~him or her~~ the parolee.

20 (d) No right of action. Any parolee arrested and detained in accordance
21 with the provisions of this chapter shall have no right of action against any law

1 enforcement officer, correctional officer, employee of the Department of
2 Corrections, or any other persons because of such arrest and detention.

3 (e) Detention pending hearing for parolee. Pending a hearing on the merits
4 upon any charge of violation other than a technical violation, the parolee shall
5 continue to be detained at a correctional facility. The Parole Board may
6 authorize the parolee's release from detention in accordance with the
7 procedures set forth in 13 V.S.A. § 7554. For the purposes of this section,
8 judicial officer, as defined in 13 V.S.A. § 7554(f), shall include the Chair of
9 the Parole Board or ~~his or her~~ the Chair's designee. There shall be no right to
10 bail or release.

11 § 552. NOTIFICATION OF BOARD; HEARING

12 (a) Upon the arrest and detention of a parolee, the parole officer shall notify
13 the Board immediately and shall submit in writing a report describing the
14 alleged violation of a condition or conditions of the inmate's parole.

15 (b) Upon receipt of the notification, or upon an arrest by warrant in
16 accordance with the provisions of section 551 of this title, the Board shall
17 cause the inmate together with a parole officer to be brought before it promptly
18 for a hearing regarding the alleged violation. Parole officers may be
19 represented by legal counsel, which shall be provided by the appropriate
20 State's Attorney or the Attorney General upon request, at hearings of the
21 Parole Board.

1 (2) is ineligible for or refuses presumptive parole pursuant to section
2 501a of this title or has been returned or revoked to prison for a violation of
3 conditions of parole, furlough, or probation; and

4 (3) agrees to comply with such conditions of supervision the
5 Department, in its sole discretion, deems appropriate for that person's
6 furlough.

7 (b) The offender's continued supervision in the community is conditioned
8 on the offender's commitment to and satisfactory progress in ~~his or her~~ the
9 offender's reentry program and on the offender's compliance with any terms
10 and conditions identified by the Department.

11 (c) Prior to release under this section, the Department shall screen and, if
12 appropriate, assess each felony drug and property offender for substance abuse
13 treatment needs using an assessment tool designed to assess the suitability of a
14 broad range of treatment services, and it shall use the results of this assessment
15 in preparing a reentry plan. The Department shall attempt to identify all
16 necessary services in the reentry plan and work with the offender to make
17 connections to necessary services prior to release so that the offender can begin
18 receiving services immediately upon release.

19 (d) An offender's release under this section shall not be interrupted or
20 revoked for a technical violation.

1 § 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

2 FURLOUGH

3 ~~(a) Authority of the Department.~~ The Department shall identify in the
4 terms and conditions of community supervision furlough those programs
5 necessary to reduce the offender's risk of reoffense and to promote the
6 offender's accountability for progress in the reintegration process. The
7 Department shall make all determinations of violations of conditions of
8 community supervision furlough pursuant to this subchapter and any resulting
9 change in status or termination of community supervision furlough status.

10 However, any change in status or termination of community supervision
11 furlough status shall not be based on a technical violation.

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

17 ~~(c) Appeal.~~

18 ~~(1) An offender whose community supervision furlough status is~~
19 ~~revoked or interrupted for 90 days or longer for a technical violation shall have~~
20 ~~the right to appeal the Department's determination to the Civil Division of the~~
21 ~~Superior Court in accordance with Rule 74 of the Vermont Rules of Civil~~

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

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

20 ~~(3) An appeal filed pursuant to this subsection shall be brought in the~~
21 ~~unit of the Superior Court in which the offender resided at the time that the~~

1 ~~offender's furlough status was revoked or interrupted or the unit in which the~~
2 ~~offender is detained after the offender's furlough status was revoked or~~
3 ~~interrupted. If an appeal is filed pursuant to this subsection in a unit lacking~~
4 ~~proper venue, the court, on its own motion or on timely motion of a party to~~
5 ~~the appeal, may transfer the appeal to a unit having proper venue.~~

6 ~~(d) Technical violations.~~

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

9 ~~(1) 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.~~

12 ~~(2) The violation or pattern of violations indicate the offender poses a~~
13 ~~danger to others.~~

14 ~~(3) The offender's violation is absconding from community~~
15 ~~supervision furlough. As used in this subdivision, "absconding" means:~~

16 * * *

17 Sec. 11. EFFECTIVE DATE

18 This act shall take effect on July 1, 2024.