

1 S.292

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Corrections; probation

5 Statement of purpose: This bill proposes to:

6 1. Clarify the legislative intent of statutory requirements for term probation
7 and administrative probation and require those government entities responsible
8 for implementation of the requirements to report to the general assembly in
9 2012 regarding compliance with the statutes.

10 2. Grant the right to bail to nonviolent misdemeanor and nonviolent felony
11 probationers who violate conditions that do not constitute new crimes.

12 3. Require the department of corrections to provide prescribed medication
13 to an offender who is admitted to a correctional facility pending an evaluation
14 by a department physician.

15 4. Discharge all nonviolent misdemeanor and nonviolent felony
16 probationers who have less than six months remaining and who are not
17 receiving services designed to reduce the risk of recidivism.

18 5. Release all persons incarcerated for nonviolent misdemeanor and
19 nonviolent felonies who:

- 20 • have served at least their minimum sentence;
- 21 • have not been released because of lack of housing; and

1 • are not receiving mandatory, court-ordered services or programming
2 designed to ensure successful reintegration into the community.

3 6. Include attempts in the list of offenses that qualify a registered sex
4 offender for posting on the Internet and exempt sex offenders with
5 developmental disabilities from the requirement that their address be posted on
6 the Internet, provided they are under 24-hour supervision and treatment in a
7 secure residential facility.

8 7. Repeal the audit of the state's sexual abuse response system.

9 8. Direct the court administrator, the executive director of the department
10 of state's attorneys and sheriffs, the defender general, and the commissioner of
11 the department of corrections to work cooperatively to achieve a 25-percent
12 reduction in the average daily detainee population by January 1, 2011, and to
13 create an efficient plan to coordinate scheduling of court hearings and
14 transportation of persons in the custody of the commissioner of corrections by
15 March 15, 2011.

16 An act relating to term probation, the right to bail, medical care of inmates,
17 and a reduction in the number of nonviolent prisoners, probationers, and
18 detainees

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

1 Sec. 1. PROBATION; LEGISLATIVE FINDINGS AND INTENT; REPORT

2 (a) It is the intent of the general assembly that term probation be the
3 standard, the default, for misdemeanors and nonviolent felonies, and that the
4 exception in the law that allows a court to deviate from this standard in the
5 interest of justice should be used judiciously and sparingly.

6 (b) Similarly, it is the intent of the general assembly that administrative
7 probation be the standard, the default, for qualifying offenses for which
8 probation is ordered, and that the exception in the law that allows a court to
9 deviate from this standard in the interest of justice should be used judiciously
10 and sparingly.

11 (c) The court administrator, the executive director of the department of
12 state's attorneys and sheriffs, the defender general, and the commissioner of
13 the department of corrections shall meet to discuss methods for increasing
14 compliance with this section and shall provide a written report to the senate
15 and house committees on judiciary no later than March 15, 2011, regarding
16 these efforts.

17 Sec. 2. OFFENDERS WITH SERIOUS FUNCTIONAL IMPAIRMENT;

18 LEGISLATIVE FINDING

19 The general assembly finds that successful community discharge for
20 offenders with serious functional impairment requires community planning
21 with appropriate departments of the agency of human services and community

1 organizations, including law enforcement, designated agencies and housing
2 providers and that the state interagency team and local interagency teams for
3 persons with serious functional impairment offer the best model for such
4 planning.

5 Sec. 3. 28 V.S.A. § 301 is amended to read:

6 § 301. SUMMONS OR ARREST OF PROBATIONER

7 * * *

8 (4) Detention pending hearing for probationer. Pending arraignment for
9 any charge of violation, the probationer shall continue to be detained at a
10 correctional facility. Thereafter, the court may release the probationer
11 pursuant to ~~section 7554 of Title 13~~ 13 V.S.A. § 7554. There shall be no right
12 to bail or release, unless the person is on probation for a nonviolent
13 misdemeanor or nonviolent felony, and the probation violation did not
14 constitute a new crime. For purposes of this subdivision:

15 (A) “Nonviolent felony” means a felony offense which is not a listed
16 crime as defined in 13 V.S.A. § 5301(7), or an offense involving sexual
17 exploitation of children in violation of chapter 64 of Title 13.

18 (B) “Nonviolent misdemeanor” means a misdemeanor offense which
19 is not a listed crime as defined in 13 V.S.A. § 5301(7), or an offense involving
20 sexual exploitation of children in violation of chapter 64 of Title 13, or
21 13 V.S.A. § 1030.

1 Sec. 4. 28 V.S.A. § 801 is amended to read:

2 § 801. MEDICAL CARE OF INMATES

3 * * *

4 (e) Except as otherwise provided in this subsection, an offender who is
5 admitted to a correctional facility while under the medical care of a physician
6 and who is taking medication at the time of admission pursuant to a valid
7 prescription shall be entitled to remain on that medication and be provided that
8 medication by the department pending an evaluation by a department
9 physician. The department is not required to provide medication in accordance
10 with this subsection if a specific medical reason for such denial is set forth in
11 writing in the intake report.

12 Sec. 5. DISCHARGE FROM THE CUSTODY OF THE DEPARTMENT OF
13 CORRECTIONS

14 (a) For purposes of this section:

15 (1) “Nonviolent felony” means a felony offense which is not a listed
16 crime as defined in 13 V.S.A. § 5301(7), or an offense involving sexual
17 exploitation of children in violation of chapter 64 of Title 13.

18 (2) “Nonviolent misdemeanor” means a misdemeanor offense which is
19 not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving
20 sexual exploitation of children in violation of chapter 64 of Title 13, or
21 13 V.S.A. § 1030.

1 (b) Notwithstanding any provisions to the contrary, the department of
2 corrections shall request that the court discharge from probation all nonviolent
3 misdemeanor probationers who, as of July 1, 2010:

4 (1) have served at least two years of an unlimited term of probation;

5 (2) are not receiving nonvoluntary, court-ordered services or
6 programming designed to reduce the risk of recidivism.

 (c) Notwithstanding any provisions to the contrary, the department of
corrections shall *request that the court* discharge from probation all nonviolent
misdemeanor and nonviolent felony probationers, *except those who are on*
probation pursuant to 23 V.S.A. § 1210(d), who, as of July 1, 2010:

7 (1) have less than six months of probation remaining; and

8 (2) are not receiving nonvoluntary, court-ordered services or
9 programming designed to reduce the risk of recidivism.

 (d)(1) Notwithstanding any provisions to the contrary, the department of
corrections shall release to furlough all persons incarcerated for nonviolent
misdemeanors and nonviolent felonies, *except those who are serving a*
sentence pursuant to 23 V.S.A. § 1210(d), who have served at least their
minimum sentence and who, as of July 1, 2010:

10 (A) have not been released because of lack of housing; and

11 (B) are not receiving nonvoluntary, court-ordered services or
12 programming designed to ensure successful reintegration into the community.

13 (2) Some of the money saved through implementation of this section
14 shall be reinvested to encourage offenders who are released pursuant to this
15 subsection to seek employment, pursue an education, or engage in community
16 service while they are on furlough. As appropriate, the department shall
17 facilitate the offenders' engagement in such meaningful endeavors by

1 removing barriers that impede offenders' participation in such. This may
2 include rethinking unnecessary driving restrictions and workday-timed
3 probation appointments that inhibit regular employment. The department shall
4 report to the senate and house committees on judiciary no later than
5 February 1, 2011, on its efforts to implement this subdivision.

(3) The general assembly finds that a contributing factor to the escalating cost of the corrections' budget is that inmates are held unnecessarily past their minimum sentence because the department of corrections has not located suitable housing for the inmates in the community. While appropriate community housing is an important consideration in release of inmates, the department of corrections shall not use lack of housing as the sole factor in denying furlough to inmates who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony.

6 (e) Offenders who are discharged from probation or released from
7 incarceration pursuant to this section shall be eligible to continue voluntary
8 attendance at the community high school of Vermont.

9 Sec. 6. 13 V.S.A. § 5411a is amended to read:

10 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

11 (a) Notwithstanding sections 2056a-2056e of Title 20, the department shall
12 electronically post information on the Internet in accordance with subsection
13 (b) of this section regarding the following sex offenders, upon their release
14 from confinement:

15 (1) Sex offenders who have been convicted of:

16 * * *

1 decrease in 24-hour supervision or elopement by the offender shall result
2 in administrative action by DAIL. This subsection shall apply only to sex
3 offenders subject to constant supervision who reside in a residence that is
4 equipped with alarms.

5 Sec. 7. Sec. 49 of No. 1 of the Acts of 2009 is amended to read:

6 Sec. 49. AUDIT OF THE STATES' SEXUAL ABUSE RESPONSE
7 SYSTEM

8 ~~(a) On or before November 15, 2011, and every five years thereafter, the~~
9 ~~auditor of accounts shall submit to the house and senate committees on~~
10 ~~judiciary, the house committees on corrections and institutions, on~~
11 ~~appropriations, on education, and on human services, and the senate committee~~
12 ~~on health and welfare an independent audit which assesses the status of the~~
13 ~~state's sexual abuse response system, including prevention, criminal~~
14 ~~investigations, presentence investigations and sentencing of offenders,~~
15 ~~supervision and treatment of offenders, victim and family assistance and~~
16 ~~treatment, and training for those working in the system.~~

17 ~~(b) The audit shall be conducted in consultation with the center for the~~
18 ~~prevention and treatment of sexual abuse.~~

19 The auditor of accounts and the Vermont network against domestic and
20 sexual violence shall collaborate as to the best approach to conduct an audit of
21 the state's sexual abuse response system while protecting confidentiality of

1 victims, and report their recommendations to the senate and house committees
2 on judiciary no later than February 1, 2011.

3 Sec. 8. REDUCTION IN NUMBER OF PERSONS DETAINED

4 (a) The general assembly finds that the number of persons detained in
5 Vermont's correctional system is rising. The average number of detainees has
6 been reported by the department of corrections as follows:

7 (1) 336 for fiscal year 2008.

8 (2) 370 for fiscal year 2009.

9 (3) 402 for the first six months of fiscal year 2010.

(b) The court administrator, the commissioner of the department of
corrections, the executive director of the department of state's attorneys and
sheriffs, and the defender general shall work cooperatively to achieve a
~~25 percent reduction in~~ reduce the average daily detainee population to 300
persons by January 1, 2011, and shall report their efforts to the general
assembly no later than February 1, 2011.

10 (c) Improvement in and greater implementation of existing strategies such
11 as term probation, administrative probation, graduated sanctions, alternative
12 sentences, and electronic monitoring shall be considered, in addition to new
13 approaches and best practices employed in other states.

14 Sec. 9. TRANSPORT OF PERSONS IN THE CUSTODY OF THE
15 COMMISSIONER OF CORRECTIONS

16 The court administrator, the executive director of the department of state's
17 attorneys and sheriffs, the defender general, and the commissioner of the
18 department of corrections shall create an efficient plan to coordinate

1 scheduling of court hearings and transportation of persons in the custody of the
2 commissioner of corrections, and shall report to the senate and house
3 committees on judiciary no later than March 15, 2011, regarding these efforts.

Sec. 9a. 24 V.S.A. § 290(b) is amended to read:

(b) Full-time deputy sheriffs whose primary responsibility is transportation of prisoners and mentally ill persons shall be paid by the state of Vermont. The appointment of such deputies and their salary shall be approved by the governor, or his designee. The executive committee of the Vermont sheriffs association and the executive director of the department of state's attorneys and sheriffs shall jointly have authority for the assignment of position locations in the counties of state paid deputy sheriffs and shall review the county location assignments periodically for efficient use of resources.

4 Sec. 10. EFFECTIVE DATES

5 (a) Sec. 5 of this act shall take effect on July 1, 2010.

6 (b) The remaining sections of this act shall take effect upon passage.