No. 157. An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

(S.292)

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

Sec. 1. PROBATION; LEGISLATIVE FINDINGS AND INTENT

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

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

Sec. 2. OFFENDERS WITH SERIOUS FUNCTIONAL IMPAIRMENT; LEGISLATIVE FINDING

The general assembly finds that successful community discharge for offenders with serious functional impairment requires community planning with appropriate departments of the agency of human services and community organizations, including law enforcement, designated agencies, and housing providers and that the state interagency team and local interagency teams for

persons with serious functional impairment offer the best model for such planning.

Sec. 3. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

(1) Sex offenders who have been convicted of:

* * *

(M) an attempt to commit any offense listed in this subdivision (a)(1).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(6) except as provided in subsection (l) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

* * *

(l) A sex offender's street address shall not be posted electronically if the offender has a developmental disability, receives funding from the department of disabilities, aging, and independent living (DAIL) for 24-hour supervision and treatment, and resides in a residence that is equipped with alarms. However, this information shall be otherwise available pursuant to this section. An agency designated pursuant to 18 V.S.A. § 8907 to provide mental health and developmental disability services (DA), or a specialized service agency (SSA) operating under an agreement entered into pursuant to 18 V.S.A. § 8912 which is providing supervision for the offender shall immediately notify the administrator of the sex offender registry and local law enforcement if the individual's level of supervision is decreased from 24 hours or if the offender leaves his or her residence without authorization, and thereafter this subsection shall cease to apply to that offender. If after notice and hearing, the commissioner of DAIL finds that the DA or SSA has failed to notify the administrator of the sex offender registry and local law enforcement of a decrease from 24-hour supervision or absence without authorization by the offender within 24 hours of the change in status, the commissioner may impose an administrative penalty of not more than $1,000.00 for each day of the violation. A DA or SSA shall have the right to a de novo appeal of a decision under this subsection pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

Sec. 4 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 or her 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.

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

§ 301. SUMMONS OR ARREST OF PROBATIONER

* * *

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

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

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

Sec. 6. 28 V.S.A. § 801(e) and (f) are added to read:

(e) Except as otherwise provided in this subsection, an offender who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed advanced practice registered nurse, or a licensed nurse practitioner and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont prescription monitoring system or other prescription monitoring or information system shall be entitled to continue that medication and to be provided that medication by the department pending an evaluation by a licensed physician, a licensed physician's assistant, a licensed nurse practitioner, or a licensed advanced practice registered nurse. However, the department may defer provision of medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician's assistant, a nurse practitioner,

or an advanced practice registered nurse, it is not in the inmate's best interest to continue the medication at that time. The licensed practitioner who makes the clinical judgment shall enter the reason for the discontinuance into the inmate's permanent medical record. It is not the intent of the general assembly that this subsection shall create a new or additional private right of action.

(f) Any contract between the department and a provider of physical or mental health services shall establish policies and procedures for continuation and provision of medication at the time of admission and thereafter, as determined by an appropriate evaluation, which will protect the mental and physical health of inmates.

Sec. 7. 28 V.S.A. § 808(a) is amended to read:

§ 808. FURLOUGHS GRANTED TO INMATES

(a) The department may extend the limits of the place of confinement of an inmate at any correctional facility if the inmate agrees to comply with such conditions of supervision the department, in its sole discretion, deems appropriate for that inmate's furlough. The department may authorize furlough for any of the following reasons:

(1) To visit a critically ill relative~~; or~~.

(2) To attend a funeral of a relative~~; or~~.

(3) To obtain medical services~~; or~~.

(4) To contact prospective employers~~; or~~.

(5) To secure a suitable residence for use upon discharge~~; or~~.

(6) To continue the process of reintegration initiated in a correctional facility. The inmate may be placed in a program of conditional reentry status by the department upon the inmate's completion of the minimum term of sentence. While on conditional reentry status, the inmate shall be required to participate in programs and activities that hold the inmate accountable to victims and the community pursuant to section 2a of this title~~; or~~.

(7) When recommended by the department and ordered by a court.

(A) Treatment furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities; ~~or~~

(B)(i) Home confinement furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences, enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court or the department or both. A sentence to home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(I) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(II) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(ii) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, the court shall consider:

(I) the nature of the offense with which the defendant was charged and the nature of the offense with which the defendant was convicted;

(II) the defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(III) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

* * *

Sec. 8. 28 V.S.A. § 808(h) is added to read:

(h) 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 provided that public safety and the best interests of the inmate will be served by reentering the community on furlough.

Sec. 9. Sec. 49 of No. 1 of the Acts of 2009 is amended to read:

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

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

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

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

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

Sec. 10. REINTEGRATION INTO THE COMMUNITY FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS

(a) For purposes of this section:

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

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

(b) The department of corrections shall request that the court discharge from probation offenders who on July 1, 2010:

(1) have served at least two years of an unlimited term of probation for a nonviolent misdemeanor and have completed all court-ordered services or programming designed to reduce the risk of recidivism; and

(2) have less than six months of term probation remaining for a nonviolent misdemeanor or a nonviolent felony, except those who are on probation pursuant to 23 V.S.A. § 1210(d) and who have completed all

court-ordered services or programming designed to reduce the risk of recidivism.

(c) During the first three months of the fiscal year, pursuant to 28 V.S.A. § 808 including subsection 808(h), the department of corrections shall release to furlough inmates who on July 1, 2010, are 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:

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

(2) have completed or are not required to complete a program designed to ensure successful reintegration into the community.

(d) Consistent with subdivisions (1) and (3) of Sec. 29 of H.792 of 2010, a portion of the money saved through implementation of this section shall be used to provide grants to community justice centers and similar programs to support offenders who are released pursuant to subsection (c) of this section to reintegrate into the community and to community providers for transitional beds, support services, and residential treatment services for offenders reentering the community. It is the intent of the general assembly that these grants shall be paid for from the amounts appropriated to the department of corrections and prior to actually realizing the savings from the provisions of this section. Support for offenders released pursuant to subsection (c) of this

section may include helping them to seek employment, pursue an education, or engage in community service while they are on furlough. As appropriate, the department shall facilitate the offenders' engagement in such meaningful endeavors by removing barriers that impede offenders' participation in these activities. This may include removing unnecessary driving restrictions and changing workday-timed probation appointments and programs that inhibit regular employment.

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

(f) In his or her monthly reports to the corrections oversight committee, the commissioner of corrections shall report on progress made in implementing subsections (b) and (c) of this section as well as in reductions in the number of detainees realized pursuant to Sec. 11 of this act.

Sec. 11. REDUCTION IN NUMBER OF PERSONS DETAINED

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

(1) 336 for fiscal year 2008.

(2) 370 for fiscal year 2009.

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

(b) The court administrator, the administrative judge of the trial courts, 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 reduce, to the extent possible, the average daily number of incarcerated detainees to 300 persons or less and to maintain the average daily number at this level. The group shall attempt to reach this level by January 1, 2011.

(c) Improvement in and greater implementation of existing strategies such as term probation, administrative probation, graduated sanctions, alternative sentences, home detention, and electronic monitoring shall be considered, in addition to new approaches and best practices employed in other states. Consideration shall be given to victim and community safety.

Sec. 12. STRATEGIES TO REDUCE NUMBER OF PEOPLE IN CUSTODY OF COMMISSIONER OF CORRECTIONS; REPORT

(a) The commissioner of corrections, the administrative judge of the trial courts, the court administrator, the executive director of the department of state's attorneys and sheriffs, and the defender general shall collaborate on strategies to reduce the number of people entering the custody of the commissioner of corrections and to minimize the time served of those who do enter the commissioner's custody, consistent with public safety.

(b) On or before March 15, 2011, the group described in subsection (a) of this section shall jointly report to the senate and house committees on judiciary, the senate committee on institutions, and the house committee on corrections and institutions on potential strategies including, but not limited to, the following:

(1) methods for increasing compliance with Sec. 1 of this act regarding term and administrative probation.

(2) strategies employed and success in reducing the average daily detainee population to 300 persons by January 1, 2011.

(3) a plan to coordinate efficient scheduling of court hearings and transportation of persons in the custody of the commissioner of corrections.

(4) a plan to improve and increase restorative justice, diversion, and other innovative municipal programs in each county so that the need for correctional services shall be reduced. The plan shall show how recommended strategies could lead to an increase in use of restorative justice programs, diversion, and innovative municipal programs and at least a ten-percent decrease in nonviolent offenders entering the corrections system.

Sec. 13. OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS; SUPERVISED BEDS; PUBLIC INEBRIATE SCREENING TOOL

(a) The office of alcohol and drug abuse programs shall develop a uniform screening tool which can be used to determine whether or not an inebriated

person is incapacitated or in need of medical or other treatment or some combination of these. The screening tool shall be used by public inebriate screeners under contract with the office. To the extent practicable, the tool shall be based on evidence-based practices and standard emergency department policies and procedures.

(b) The office of alcohol and drug abuse programs shall develop supervised two-bed units for location of incapacitated persons taken into custody pursuant to 33 V.S.A. § 708. Units shall be developed as funding is available and placed in counties in which no bed space for incapacitated persons exists. Priority shall be based on population density and on demonstrated collaboration between stakeholders.

Sec. 14. Sec. 22(a) of No. 179 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(a) Secs. 11 and 12 of this act shall take effect on July 1, ~~2011~~ 2012.

Sec. 15. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, the commissioner of the department of children and families, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive

director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region.

Sec. 16. COMMISSIONER OF CORRECTIONS; INMATES WHO ARE PARENTS; FAMILIES; CONTACT POLICIES

(a) The commissioner of corrections may request information about minor children from anyone entering the system who is charged with or convicted of a criminal offense. Information the commissioner may request includes: how many minor children the person has; each child's date of birth and gender; who

is the primary caregiver for each minor child; if the person is the primary caregiver, how the child is being cared for in the caregiver's absence.

(b) The commissioner of corrections shall examine department of corrections policies regarding use of mail, telephone, and personal visits and revise them to promote quality relations between inmates and their families as appropriate. Specifically, the commissioner shall:

(1) Review and revise if necessary policies and practices to better promote affordable telephone contact between inmates and their families.

(2) Eliminate any existing policy which limits telephone calls and visitation with minor children as a disciplinary measure.

(c) On or before January 15, 2011, the commissioner shall report on the information gathered and actions taken under this section to the senate committee on judiciary and the house committee on corrections and institutions along with recommendations for policy and statutory change which may result in improved contact between inmates and their families.

Sec. 17. 21 V.S.A. § 306 is added to read:

§ 306. PUBLIC POLICY OF THE STATE OF VERMONT; EMPLOYMENT SEPARATION AGREEMENTS

In support of the state's fundamental interest in protecting the safety of minors and vulnerable adults, as defined in 33 V.S.A. § 6902, it is the policy of the state of Vermont that no confidential employment separation agreement

shall inhibit the disclosure to prospective employers of factual information about a prospective employee's background that would lead a reasonable person to conclude that the prospective employee has engaged in conduct jeopardizing the safety of a minor or vulnerable adult. Any provision in an agreement entered into on or after the effective date of this section that attempts to do so is void and unenforceable.

Sec. 17a. 28 V.S.A. §102(c)(22) is added to read:

(22) To notify local and state law enforcement officers of the following information regarding a person released from incarceration on probation, parole or furlough and residing in the community: name; address; conditions imposed by the court, parole board, or commissioner; and the reason for placing the person in that community.

Sec. 18. 21 V.S.A. § 307 is added to read:

§ 307. DISCLOSURE OF INFORMATION; WAIVER

(a) Each prospective employee whose duties may place that person in a position of power, authority, or supervision over or permit unsupervised contact with a minor or vulnerable adult shall sign a waiver prior to employment authorizing:

(1) the prospective employer to request information about the prospective employee from current employers and former employers who

employed the person within the previous ten years regarding conduct jeopardizing the safety of a minor or vulnerable adult; and

(2) the current and former employers to disclose the requested information as provided in subsection (c) of this section.

(b) The prospective employer of a prospective employee described in subsection (a) of this section shall request in writing that the current and former employers disclose all factual information that would lead a reasonable person to conclude that the prospective employee engaged in conduct jeopardizing the safety of a minor or vulnerable adult.

(c) Upon receiving an inquiry from a prospective employer pursuant to subsection (b) of this section, a current or former employer promptly shall disclose in writing all factual information in its possession that is responsive to that inquiry; provided that the affected employee shall have had the opportunity to review and respond to the information and the employee's response, if any, shall be included with the disclosure. Current and former employers shall provide a copy of the disclosure, or a statement that there is nothing to disclose, to both the prospective employer and the prospective employee.

Sec. 19. REPORT; CIVIL IMMUNITY

Legislative counsel shall review the potential impacts on hiring practices in Vermont if the state were to grant civil immunity for prospective, current, and

former employers in connection with the disclosure of information concerning conduct jeopardizing the safety of a minor or vulnerable adult contained in a prospective employee's personnel file from the previous ten years, including the manner in which these matters are addressed in other jurisdictions. On or before January 15, 2011, the legislative counsel shall submit a report regarding the review to the general assembly.

Sec. 20. REPORT; SUSPECTED CHILD ABUSE

The commissioner of education and the commissioner for children and families, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, and the Vermont-National Education Association, shall examine the effectiveness of the memorandum of understanding entered into between the department of education and the department for children and families dated November 23, 2009 regarding sharing reported information concerning the behaviors of individuals regulated by the department of education. On or before December 15, 2010, the commissioners shall jointly report their conclusions, together with any proposed statutory amendments, to the senate and house committees on judiciary and on education.

Sec. 21. COMMISSIONER OF CORRECTIONS; AID TO COMMUNITIES WITH A HIGH PERCENTAGE PER CAPITA OF PEOPLE UNDER THE CUSTODY OF THE COMMISSIONER

Notwithstanding Sec. D.12 of H.792 of 2010, for expenditures from funds reinvested in community level services pursuant to Sec. D9 of H.792 of 2010 (Challenges Bill) and Sec. 338 of H.789 of 2010 (Appropriations Act), the commissioner shall give priority to projects located in communities which have a high percentage per capita of people under his or her custody, including those living in the community and residents who are incarcerated, and not limited to those four communities that have the highest number of people under his or her custody.

Sec. 22. EFFECTIVE DATES

(a) Sec. 18 of this act shall take effect on April 1, 2011.

(b) This section and Secs. 17, 19, 20, and 21 of this act shall take effect on passage.

(c) The remaining sections of this act shall take effect on July 1, 2010.

Approved: June 3, 2010