

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 Senate Bill No. 127 entitled “An act relating to the procedures and review of
4 community supervision furlough revocation or interruption appeals”
5 respectfully reports that it has considered the same and recommends that the
6 House propose to the Senate that the bill be amended by striking out all after
7 the enacting clause and inserting in lieu thereof the following:

8 Sec. 1. 28 V.S.A. § 724 is amended to read:

9 * * *

10 (b) ~~90-day~~ 180-day interruption or revocation. Any interruption of an
11 offender’s community supervision furlough after the Department has found a
12 technical violation of furlough conditions shall trigger a Department Central
13 Office case staffing review and Department notification to the Office of the
14 Defender General if the interruption will be ~~90~~ 180 days or longer.

15 (c) Appeal.

16 (1) An offender whose community supervision furlough status is
17 revoked or interrupted for ~~90~~ 180 days or longer for a technical violation shall
18 have the right to appeal the Department’s determination to the Civil Division
19 of the Superior Court in accordance with Rule 74 of the Vermont Rules of
20 Civil Procedure. The appeal shall be based on a de novo review of the record.
21 The appellant may offer testimony, and, in its discretion for good cause shown,

1 the court may accept additional evidence to supplement the record. If
2 additional evidence is accepted by the court, the Department, through the
3 Office of the Vermont Attorney General, shall have the opportunity to present
4 rebuttal evidence, including testimony, for the court's consideration. The
5 notice of appeal filed pursuant to Rule 74 shall include a certification that the
6 court has subject matter jurisdiction. The Department shall file an objection to
7 subject matter jurisdiction within 14 days, which shall stay the filing of the
8 record on appeal until the court issues an order on the Department's objection.

9 The appellant shall have the burden of proving by a preponderance of the
10 evidence that the Department abused its discretion in imposing a furlough
11 revocation or interruption for ~~90~~ 180 days or longer pursuant to subsection (d)
12 of this section.

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

19 (3) An appeal filed pursuant to this subsection shall be brought in the
20 unit of the Superior Court in which the offender resided at the time that the
21 offender's furlough status was revoked or interrupted or the unit in which the

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

5 (d) Technical violations.

6 (1) As used in this section, "technical violation" means a violation of
7 conditions of furlough that does not constitute a new crime.

8 (2) It shall be abuse of the Department's discretion to revoke furlough or
9 interrupt furlough status for ~~90~~ 180 days or longer for a technical violation,
10 unless:

11 (A) the offender's risk to reoffend can no longer be adequately
12 controlled in the community, and no other method to control noncompliance is
13 suitable; ~~or~~

14 (B) the violation or pattern of violations indicate the offender poses a
15 danger to others ~~or to the community or poses a threat to abscond or escape~~
16 ~~from furlough; or~~

17 (C) the offender absconded from community supervision furlough.

18 As used in this subdivision, "absconded" means:

19 (i) the offender has not met supervision requirements; cannot be
20 located with reasonable efforts; and has not made contact with Department
21 staff within three days if convicted of a listed crime as defined in 13 V.S.A.

1 § 5301(7), or seven days if convicted of a crime not listed in 13 V.S.A.

2 § 5301(7):

3 (ii) the offender flees from Department staff or law enforcement;

4 or

5 (iii) the offender left the State without Department authorization.

6 **Sec. 2.** 28 V.S.A. § 123 is amended to read:

7 * * *

8 (c) Powers and duties. The Commission shall have the following duties:

9 (1) Provide advice and counsel to the Commissioner of Corrections in
10 carrying out the Commissioner's responsibilities at the Department of
11 Corrections to monitor reporting of sexual misconduct, oversee the
12 implementation of the Department's anti-retaliation policy, create
13 transparency, and implement policies relating to misconduct, and review
14 disciplinary actions policies.

15 (F) investigations of compliance with the policies and procedures
16 governing employee misconduct investigations, the movement of contraband
17 in facilities, threats to personal safety, and the Department's response to major
18 events that occur in the Department of Corrections, including the death of an
19 individual in the custody of the Commissioner of Corrections and the escape of
20 an individual from a Department facility or Department custody; and

21 * * *

1 (i) Confidentiality. Any information or report related to employee
2 misconduct or discipline that is provided to the Commission shall be in a form
3 that does not include personally identifiable information of any of the parties to
4 the alleged misconduct and does not disclose any information that is required
5 to be kept confidential pursuant to applicable State and federal law or any
6 applicable collective bargaining or employment contract.

7 (j) As used in this section, “monitor” may include access to incident reports
8 sufficient to discern the nature of the incident in question and compliance with
9 the policies and procedures governing the incident.

10 **Sec. 3. EFFECTIVE DATE**

11 This act shall take effect on passage except:

12 (a) Notwithstanding 1 V.S.A. §§ 213 and 214, the following provisions of
13 Sec. 1 shall take effect retroactively to any pending Rule 74 appeal filed at any
14 time prior to the effective date of this act:

15 (1) the provisions of 28 V.S.A. § 724(c)(1) related to subject matter
16 jurisdiction certification and the Department’s ability to object to subject
17 matter jurisdiction; and

18 (2) 28 V.S.A. § 724(c)(3) (venue).

19 (b) An appeal filed on or after the effective date of this act shall be
20 reviewed under the 180-day or longer interruption or revocation period
21 provided for in 28 V.S.A. § 724(c)(1) and (d)(2).

1 and that after passage the title of the bill be amended to read: “An act
2 relating to clarifying community supervision furlough appeals and the powers
3 of the Corrections Monitoring Commission”

4

5 (Committee vote: _____)

6

7

Representative _____

8

FOR THE COMMITTEE