

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred  
3 House Bill No. 769 entitled “An act relating to strategies to reduce the  
4 incarcerated population” respectfully reports that it has considered the same  
5 and recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 **Sec. 1. LAW ENFORCEMENT; DEPARTMENT OF CORRECTIONS;**

8 **NONVIOLENT MISDEMEANOR WORKGROUP ESTABLISHED;**

9 **SUNSET**

10 (a) Creation. There is created a Vermont Nonviolent Misdemeanor  
11 Workgroup for the following purposes:

12 (1) to examine the practice of continuing custody of individuals arrested  
13 for a nonviolent misdemeanor as defined in 28 V.S.A. § 301(4)(B) pursuant to  
14 V.R.Cr.P.3(c), and the resulting impact on the Department of Corrections;

15 (2) to identify community, local, State, and federal resources available  
16 to a person detained by law enforcement for a nonviolent misdemeanor  
17 offense; and

18 (3) to recommend legislation, practices, and coordination of services to  
19 promote interagency collaboration, improve systemic responses to nonviolent  
20 misdemeanants, and reduce the number of people housed within the  
21 Department of Corrections.

1           **(b) Membership. The Workgroup shall comprise the following members:**

2                   **(1) two current county sheriffs appointed by the Vermont Sheriffs'**

3           **Association;**

4                   **(2) two current chiefs of police appointed by the Vermont Association**

5           **of Chiefs of Police;**

6                   **(3) two representatives of the Vermont Police Association appointed by**

7           **the President of the Association;**

8                   **(4) a representative of the Department of Public Safety appointed by the**

9           **Commissioner;**

10                  **(5) a representative of the Department of Corrections appointed by the**

11           **Commissioner;**

12                  **(6) a current State's Attorney appointed by the Department of State's**

13           **Attorneys and Sheriffs;**

14                  **(7) a representative of the Vermont Center for Crime Victim Services**

15           **appointed by its Executive Director; and**

16                  **(8) a representative of the Attorney General's Office.**

17           **(c) Meetings.**

18                  **(1) The appointed State's Attorney shall call the first meeting of the**

19           **Workgroup to occur on or before September 30, 2016.**

20                  **(2) The Workgroup shall select a chair and vice chair from among its**

21           **members at the first meeting. The Vice Chair shall also serve as Secretary.**

1           (3) The Workgroup shall meet at such times as may reasonably be  
2           necessary to carry out its duties, but at least once in each calendar quarter.

3           (d) Powers and Duties.

4           (1) The Workgroup shall review the statutory duties, responsibilities,  
5           and resources of the Vermont Department of Corrections and law enforcement  
6           agencies that arise when an individual is arrested for committing a nonviolent  
7           misdemeanor and subject to continued custody under V.R.Cr.P.3(c). The  
8           Workgroup shall create and disseminate to Vermont law enforcement agencies  
9           a summary of that review, and shall recommend practices that could reduce the  
10           number of people continued in custody after arrest for a nonviolent  
11           misdemeanor to assist in the statewide effort to reduce the number of people  
12           housed within Vermont correctional facilities.

13           (2) The Workgroup may, in its discretion, create regional  
14           subworkgroups. The Workgroup shall have the authority to consult with State  
15           agencies and organizations to create regional sub-workgroups, which may  
16           include the Department of Health, the Department of Mental Health, and  
17           designated agencies, as defined in 18 V.S.A. § 7252. Such agencies and  
18           organizations shall appoint representatives to the subworkgroups. The  
19           subworkgroups shall identify community, local, State, and federal resources  
20           that are available or should be made available as a reasonable alternative for  
21           detaining individuals for a nonviolent misdemeanor offense under

1 V.R.Cr.P.3(c). Each subworkgroup shall report to the Workgroup on its  
2 findings and recommendations.

3 (e) Assistance. The Workgroup and its subworkgroups shall have the  
4 assistance of the Agency of Human Services, the Department of Corrections,  
5 and the Department of Public Safety. The Department of Corrections shall  
6 provide assistance and support for meetings, and the Department of Public  
7 Safety shall provide assistance disseminating information to law enforcement.

8 (f) Report. The Workgroup shall report on its findings and  
9 recommendations to the Joint Legislative Justice Oversight Committee on or  
10 before September 1, 2017.

11 (g) This section is repealed on \_\_\_\_\_.

12 Sec. 2. 28 V.S.A. § 105 is amended to read:

13 § 105. CASELOAD CAPACITY

14 (a) Corrections officers designated to work exclusively with offenders in  
15 the community who are 21 years of age ~~and~~ or younger shall have caseloads of  
16 no more than 25 youths.

17 (b) The department shall review the severity of offenses and assess the risk  
18 to reoffend of all offenders older than 21 years of age under its jurisdiction in  
19 the community and assign one of the following levels of supervision to each  
20 offender:



1           ~~(4) All offenders requiring administrative supervision may be supervised~~  
2           on caseloads consistent with the capacity of automated ~~status reporting~~  
3           ~~monitoring~~ systems as established by the ~~department~~ Department.

4           ~~(5)(4)~~ When there is a mixed profile caseload in which a single  
5           corrections officer supervises offenders with different supervision levels and at  
6           least one-third of the offenders require a more intensive supervision demand  
7           than the other offenders, the caseload shall be supervised at the lowest level of  
8           offender-to-staff ratio.

9           Sec. 3. 28 V.S.A. § 205 is amended to read:

10          § 205. PROBATION

11           (a)(1) After passing sentence, a court may suspend all or part of the  
12           sentence and place the person so sentenced in the care and custody of the  
13           Commissioner upon such conditions and for such time as it may prescribe in  
14           accordance with law or until further order of court.

15           (2) The term of probation for misdemeanors shall be for a specific term  
16           not to exceed two years unless the Court, in its sole discretion, specifically  
17           finds that the interests of justice require a longer or an indefinite period of  
18           probation.

19           (3)(A) The term of probation for nonviolent felonies shall not exceed  
20           four years or the statutory maximum term of imprisonment for the offense,

1       whichever is less, unless the Court, in its sole discretion, specifically finds that  
2       the interests of justice require a longer or an indefinite period of probation.

3               (B) As used in this subdivision, “nonviolent felonies” means an  
4       offense which is not:

5                       (i) a listed crime as defined in 13 V.S.A. § 5301(7); or

6                       (ii) an offense involving sexual exploitation of children in  
7       violation of 13 V.S.A. chapter 64.

8               (4) Nothing in this subsection shall prevent the Court from terminating  
9       the period of probation and discharging a person pursuant to section 251 of this  
10      title.

11              (5) The probation officer of a person on probation for a specific term  
12      shall review the person’s case file during probation and, not less than 45 days  
13      prior to the expiration of the probation term, may file a petition with the Court  
14      requesting the Court to extend the period of probation for a specific term not to  
15      exceed one year in order to provide the person the opportunity to complete  
16      programming consistent with special conditions of probation. A hearing on the  
17      petition for an extension of probation under this subsection shall comply with  
18      the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal  
19      Procedure.

20              (b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for  
21      which the offender has been placed on probation shall have the right to request,

1 and receive from the Department of Corrections information regarding the  
2 offender's general compliance with the specific conditions of probation.

3 Nothing in this section shall require the Department of Corrections to disclose  
4 any confidential information revealed by the offender in connection with  
5 participation in a treatment program.

6 (c)(1) Unless the Court in its discretion finds that the interests of justice  
7 require additional standard and special conditions of probation, when the Court  
8 orders a specific term of probation for a qualifying offense, the offender shall  
9 be placed on administrative probation, ~~which means that the only conditions of~~

10 . After sentencing, the Department may place a nonviolent misdemeanor  
11 offender on administrative probation, provided that the offender poses a low  
12 risk of reoffense and such placement would not compromise victim safety.

13 The only conditions of administrative probation shall be that the probationer:

14 (A) register with the Department of Corrections' probation and  
15 parole office in his or her district;

16 (B) notify the probation officer of his or her current address each  
17 month;

18 (C) within 72 hours, notify the Department of Corrections if probable  
19 cause is found for a criminal offense during the term of probation; and

20 (D) not be convicted of a criminal offense during the term of  
21 probation.

1           (2) As used in this subsection, “~~qualifying offense~~” “nonviolent  
2 misdemeanor” means:

3           (A) ~~Unlawful mischief under 13 V.S.A. § 3701.~~

4           (B) ~~Retail theft under 13 V.S.A. §§ 2575 and 2577.~~

5           (C) ~~Operating after suspension or revocation of license under~~  
6 ~~23 V.S.A. § 674(a).~~

7           (D) ~~Bad checks under 13 V.S.A. § 2022.~~

8           (E) ~~Theft of services under 13 V.S.A. § 2582.~~

9           (F) ~~Disorderly conduct under 13 V.S.A. § 1026, unless the original~~  
10 ~~charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~

11           (G) ~~Theft of rented property under 13 V.S.A. § 2591.~~

12           (H) ~~Operation without consent of owner under 23 V.S.A. § 1094(a).~~

13           (I) ~~Petit larceny under 13 V.S.A. § 2502.~~

14           (J) ~~Negligent operation of a motor vehicle under 23 V.S.A.~~  
15 ~~§ 1091(a).~~

16           (K) ~~False reports to law enforcement under 13 V.S.A. § 1754.~~

17           (L) ~~Setting fires under 13 V.S.A. § 508.~~

18           (M) ~~A first offense of a minor’s misrepresenting age, procuring,~~  
19 ~~possessing, or consuming liquors under 7 V.S.A. § 657.~~

1           ~~(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)~~  
2           ~~unless the original charge was a listed offense as defined in 13 V.S.A.~~  
3           ~~§ 5301(7).~~

4           ~~(O) Unlawful trespass under 13 V.S.A. § 3705(a).~~

5           ~~(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).~~  
6           ~~a misdemeanor offense which is not a listed crime as defined in 13 V.S.A.~~  
7           ~~§ 5301(7) or an offense involving sexual exploitation of children in violation~~  
8           ~~of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.~~

9           (3) Nothing in this subsection shall prohibit a court from requiring  
10          participation in the restorative justice program established in chapter 12 of  
11          this title.

12          Sec. 4. 28 V.S.A. § 808 is amended to read:

13          § 808. FURLOUGHS GRANTED TO OFFENDERS

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

19                 (1) To visit a critically ill relative.

20                 (2) To attend the funeral of a relative.

21                 (3) To obtain medical services.

1           (4) To contact prospective employers.

2           (5) To secure a suitable residence for use upon discharge.

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

9           (b) An offender granted a furlough pursuant to this section may be  
10 accompanied by an employee of the Department, in the discretion of the  
11 Commissioner, during the period of the offender's furlough. The Department  
12 may use electronic monitoring equipment such as global position monitoring,  
13 automated voice recognition telephone equipment, and transdermal alcohol  
14 monitoring equipment to enable more effective or efficient supervision of  
15 individuals placed on furlough.

16           (c) The extension of the limits of the place of confinement authorized by  
17 this section shall in no way be interpreted as a probation or parole of the  
18 offender, but shall constitute solely a permitted extension of the limits of the  
19 place of confinement for offenders committed to the custody of the  
20 Commissioner.

1 (d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee  
2 of the Department, or correctional officer responsible for supervising an  
3 offender believes the offender is in violation of any verbal or written condition  
4 of the furlough, the officer or employee may immediately lodge the offender at  
5 a correctional facility or orally or in writing deputize any law enforcement  
6 officer or agency to arrest and lodge the offender at such a facility. The officer  
7 or employee shall subsequently document the reason for taking such action.

8 (e) The Commissioner may place on medical furlough any offender who is  
9 serving a sentence, including an offender who has not yet served the minimum  
10 term of the sentence, who is diagnosed with a terminal or debilitating condition  
11 so as to render the offender unlikely to be physically capable of presenting a  
12 danger to society. The Commissioner shall develop a policy regarding the  
13 application for, standards for eligibility of, and supervision of persons on  
14 medical furlough. The offender may be released to a hospital, hospice, other  
15 licensed inpatient facility, or other housing accommodation deemed suitable by  
16 the Commissioner.

17 (f) While appropriate community housing is an important consideration in  
18 release of offenders, the Department shall not use lack of housing as the sole  
19 factor in denying furlough to offenders who have served at least their  
20 minimum sentence for a nonviolent misdemeanor or nonviolent felony  
21 provided that public safety and the best interests of the offender will be served

1 by reentering the community on furlough. The Department shall adopt rules to  
2 implement this subsection.

3 (g) Subsections (b)–(f) of this section shall also apply to sections 808a ~~and~~,  
4 808b, 808c, and 808e of this title.

5 Sec. 5. 28 V.S.A. § 808a is amended to read;

6 § 808a. TREATMENT FURLOUGH

7 (a) ~~An offender may be sentenced to serve a term of imprisonment, but~~  
8 ~~placed by a court on treatment furlough to participate in such programs~~  
9 ~~administered by the Department in the community that reduce the offender's~~  
10 ~~risk to reoffend or that provide reparation to the community in the form of~~  
11 ~~supervised work activities.~~

12 (b) Provided the approval of the sentencing judge is first obtained, the  
13 Department may place on treatment furlough an offender who has not yet  
14 served the minimum term of the sentence, who, in the Department's  
15 determination, needs residential treatment services not available in a  
16 correctional facility. The services may include treatment for substance abuse  
17 or personal violence or any other condition that the Department has determined  
18 should be addressed in order to reduce the offender's risk to reoffend or cause  
19 harm to himself or herself or to others in the facility. The offender shall be  
20 released only to a hospital or residential treatment facility that provides  
21 services to the general population. The State's share of the cost of placement

1 in such a facility, net of any private or federal participation, shall be paid  
2 pursuant to memoranda of agreement between and within State agencies  
3 reflective of their shared responsibilities to maximize the efficient and  
4 effective use of State resources. In the event that a memorandum of agreement  
5 cannot be reached, the Secretary of Administration shall make a final  
6 determination as to the manner in which costs will be allocated.

7 ~~(e)~~(b)(1) Except as provided in subdivision (2) of this subsection, the  
8 Department, in its own discretion, may place on treatment furlough an offender  
9 who has not yet served the minimum term of his or her sentence for an eligible  
10 misdemeanor as defined in section 808d of this title if the Department has  
11 made a determination based upon a risk assessment that the offender poses a  
12 low risk to public safety or victim safety and that employing an alternative to  
13 incarceration to hold the offender accountable is likely to reduce the risk of  
14 recidivism.

15 (2) Driving under the influence of alcohol or drugs, second offense, as  
16 defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of  
17 alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be  
18 considered eligible misdemeanors for the sole purpose of subdivision (1) of  
19 this subsection.

20 Sec. 6. 28 V.S.A. § 808e is added to read:

21 § 808e. PREAPPROVED FURLOUGH

1        (a) When recommended by the Department, the court may sentence an  
2        offender to serve a term of imprisonment, but place the offender on  
3        preapproved furlough to participate in programs in the community  
4        administered by the Department that reduce the offender’s risk to reoffend.

5        (b) An offender who meets program requirements may be sentenced to  
6        preapproved furlough to participate in a program that provides reparation to the  
7        community in the form of supervised work activity.

8        Sec. 7. EFFECTIVE DATE

9        This act shall take effect on July 1, 2016.

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE