

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.

7        (c) Notwithstanding any provisions to the contrary, the department of  
8        corrections shall discharge from probation all nonviolent misdemeanor and  
9        nonviolent felony probationers who, as of July 1, 2010:

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

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

13        (d)(1) Notwithstanding any provisions to the contrary, the department of  
14        corrections shall release to furlough all persons incarcerated for nonviolent  
15        misdemeanors and nonviolent felonies who have served at least their minimum  
16        sentence and who, as of July 1, 2010:

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

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

20           (2) Some of the money saved through implementation of this section  
21        shall be reinvested to encourage offenders who are released pursuant to this

1 subsection to seek employment, pursue an education, or engage in community  
2 service while they are on furlough. As appropriate, the department shall  
3 facilitate the offenders' engagement in such meaningful endeavors by  
4 removing barriers that impede offenders' participation in such. This may  
5 include rethinking unnecessary driving restrictions and workday-timed  
6 probation appointments that inhibit regular employment. The department shall  
7 report to the senate and house committees on judiciary no later than  
8 February 1, 2011, on its efforts to implement this subdivision.

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

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

13 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

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

19 \* \* \*

20 (M) an attempt to commit any offense listed in this subdivision

21 (a)(1).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

\* \* \*

(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 and receives funding from the department of disabilities, aging, and independent living (DAIL) for 24-hour supervision and treatment, but such information shall be otherwise available pursuant to section 5411a of this title. If the individual's level of supervision is decreased from 24 hours or if the offender elopes from his or her residence, the designated agency (DA) or specialized service agency (SSA) providing supervision for the offender shall immediately notify the administrator of the sex offender registry and local law enforcement and, thereafter, this subsection shall cease to apply to that offender. Failure by the DA or SSA to notify the administrator of the sex offender registry and local law enforcement of a decrease in 24-hour supervision or elopement by the offender shall result in administrative action by DAIL. This subsection shall apply only to sex



1 offenders subject to constant supervision who reside in a residence that is  
2 equipped with alarms.

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

4 Sec. 49. AUDIT OF THE STATES' SEXUAL ABUSE RESPONSE  
5 SYSTEM

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

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

17 The auditor of accounts and the Vermont network against domestic and  
18 sexual violence shall collaborate as to the best approach to conduct an audit of  
19 the state's sexual abuse response system while protecting confidentiality of  
20 victims, and report their recommendations to the senate and house committees  
21 on judiciary no later than February 1, 2011.

1       Sec. 8. REDUCTION IN NUMBER OF PERSONS DETAINED

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

5           (1) 336 for fiscal year 2008.

6           (2) 370 for fiscal year 2009.

7           (3) 402 for the first six months of fiscal year 2010.

8           (b) The court administrator, the commissioner of the department of  
9       corrections, the executive director of the department of state's attorneys and  
10       sheriffs, and the defender general shall work cooperatively to achieve a  
11       25-percent reduction in the average daily detainee population by January 1,  
12       2011, and shall report their efforts to the general assembly no later than  
13       February 1, 2011.

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

18       Sec. 9. TRANSPORT OF PERSONS IN THE CUSTODY OF THE  
19                COMMISSIONER OF CORRECTIONS

20          The court administrator, the executive director of the department of state's  
21       attorneys and sheriffs, the defender general, and the commissioner of the

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

5 Sec. 10. EFFECTIVE DATES

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

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