

# **Department of Corrections Response**

to the  
**Report and Recommendations**  
of  
**The Governor's Commission on Corrections Overcrowding**

**February 26, 2005**

## **General Response:**

The Report of the Governor's Prison Overcrowding Commission was comprehensive, thoughtful, and represents an extraordinary level of effort by the Commission in examining this issue. This report validates the Administration's concerns that corrections overcrowding undercuts all efforts to improve service delivery and increase accountability.

The focus of the report is that growth in demand on the current corrections system is destructive of human potential and fiscally unsustainable. The Commission finds that overcrowding is not just a corrections problem, and the solutions will require comprehensive and coordinated responses from all three branches of State government, and local government and law enforcement.

The strategies recommended by the Report are intended to reduce crowding. The strategies are thoughtfully considered, and if implemented in a carefully planned and sequenced manner, will create important opportunities for the Vermont Department of Corrections not only to accomplish its goals as defined in statute (Title 28) and also to reduce the costs to the taxpayer, and focus on keeping victims of crime safe, holding offenders accountable, and maintaining the quality of life in our Vermont communities.

The specific recommendations of the report, and the Department of Corrections' response to each one, follow:

### ***Recommendation 1. Use GPS Technology to Release 400 Prisoners***

*The Overcrowding Commission Report recommends the Department investigate the use of Global Positioning Technology to enhance supervision of offenders in the community, to allow an increased release of inmates. The developments in electronic offender monitoring and global positioning technology are expanding dramatically. Many states are experimenting with various technologies for controlling and monitoring different correctional populations, with varying results.*

## **Response:**

Vermont needs to take a careful approach to using technology to augment supervision. We need to target the technology to both improve the effectiveness of monitoring offenders released to the community, and to assure public safety while reducing the demand for incarceration.

In the budget for Fiscal Year 2006, the Governor is recommending a pilot program of electronic monitoring of two target populations of offenders, relieving the bedspace demand by about 30 beds in the first year of operation. Victims and community members have a right to have the most effective supervision strategies employed, and be able to count on them to work.

### **a. Pilot Program for Enhanced Re-entry Supervision**

The first application will be to use Global Positioning System (GPS) technology with a small number of Felony Motor Vehicle (DWI) offenders who are sentenced to terms of incarceration. Offenders will be carefully selected from the population for this pilot which will involve remote transdermal alcohol monitoring. Global Positioning and other Electronic Technologies show promise in reducing uncertainty and increasing surveillance capacity, augmenting supervision.

The technology will be what is known as "Passive GPS" meaning the offender's location will be electronically determined several times daily. This technology will be used for the first 90-180 days of release, until the offenders have demonstrated they are ready for lower supervision levels.

An additional application may be added to the GPS technology, which involves the use of Radio-Frequency (RF) monitoring. This technology provides electronic notification if an offender leaves an assigned area in the range of the unit. Other technologies, including the use of so-called "drive-by" monitoring will allow unobtrusive monitoring of work and other activities.

This program will provide another sentencing option for the courts, in addition to current supervision and treatment in the community under the Intensive Substance Abuse Program (ISAP). We anticipate about 10 offenders will be involved in the program at any point in time. It is estimated that this will reduce demand by about ten beds. It will be piloted in two counties, likely Rutland and Chittenden.

### **b. Pilot Program for Violation Sanction Enhancement**

The second group of offenders will be drawn from those already in the community on conditional reentry following a prison term who have violated their release conditions, and would otherwise be given the highest level of graduated sanction, specifically, a short stay in jail. The technology for this application will include Radio-Frequency hardware and Telephone Supervision enhancement. Both technologies increase the

accountability of offenders and are experienced by offenders as intrusive and bothersome. This intervention is designed as reduction in freedom and an increase in supervision intensity. The Radio Frequency technology provides “drive-by” verification of the offender presence at scheduled activities, without disrupting work, treatment, or education programming. The Telephone Supervision will be the primary monitor while the offender is at home, with the RF used to enhance the supervision for some of the group.

It is estimated that this sanction piloted in two counties will reduce demand for bedspace by about 10 beds.

Technology	Bed Demand Savings	Cost
GPS-passive	5 beds	\$40,000
RF	5 beds	\$40,000
RF-Telephone	10 beds	\$17,000

In addition, the Department will implement a pilot program of telephone enhanced supervision of lower risk offenders on probation in the community, to increase efficiencies in managing the large numbers of offenders in this status, and free up resources to supervise higher risk offenders more intensively. This program is cost-neutral, paid for by the offenders, and involves automated routine condition compliance monitoring by telephone, employing programmed calling and keypad entry by the offender in his or her home. The system generates exception reports that are investigated by the probation officer. By itself the program will not produce immediate reduction in bedspace demand, but will allow resource reallocation to supervise released offenders more intensively.

A concern that has been expressed over the use of electronic supervision is that the use of electronics, or other means of increasing the degree to which offender behavior is scrutinized, often can lead to increased incarceration, rather than reducing it. This potential counterproductive outcome provides further reason for careful study of outcomes. The Department will engage in an 18-month evaluation of the impact of this technology.

In subsequent budgets, the Department will expand usage of this technology based on the outcomes of evaluation of these pilot studies.

## **Recommendation 2.      Substantially Reduce the Number of Detainees**

*The Overcrowding Commission Report identified detention as the source for much of the overcrowding and disruption of correctional facilities, and recommended several broad strategies to address the issues.*

### **a.      *Speedier Resolution of Cases of Detained Persons***

*First, addressing the processing of detainees, the Report recommended speedier resolution by the courts, including increased resources to provide the ability to meet 60 day resolution of misdemeanors, and weekend arraignment.*

#### **Response:**

We can report that the past several months have seen a cooperative and collaborative effort on the part of the Courts and the Department of Corrections that has resulted in a dramatic decrease (more than 20% from the peak in September, 2003) in the size of the detainee population in prison. This has been accomplished as the result of two processes. First is a reduction in the length of stay for offenders held without bail for serious charges, by about 10% comparing the period May-November 2003 with the same period in 2004. This has contributed about half of the drop since September 2003, or about 25 bed-years.

Second is a reduction in the raw number of offenders being held in detention with bail amounts, and this seems to be the result of increased processing speed with regard to less serious crimes. There has been an average of about a 10% increase in the proportion of offenders whose detention status is resolved within 60 days. This suggests a decrease in length of stay in detention of about 20 bed-years.

These two developments indicate that the strategies recommended by the Overcrowding Commission, which were consistent with the recommendations of the Detention Study presented to the Legislature in January, 2004, by the Court Administrator, Corrections Department, Defender General, and State's Attorneys Department, were correct, and are having the desired effect in reducing the population in detention.

### **b.      *Increase Alternatives to Detention***

*Addressing the use of detention, the Report recommended the use of alternatives to detention, including Police Diversion, Release on Recognizance, and the reduction in the use of Bail Release Conditions.*

#### **Response:**

These practices are being modeled in some areas. Police Diversion is in place in Burlington, Winooski, Hartford and St. Johnsbury. There are also successful youth

precharge programs funded by the AHS in Barre, Brattleboro and Montpelier. The success of these programs is contingent on Police having the resource of a Community Justice Center to provide alternative responses to arrest and also having a close working relationship with prosecution.

Judges in Chittenden County and elsewhere have begun "Weekend Bail" processes that seem to be promising, but need to be fully evaluated. The costs of expanding these practices to other counties and courts will be an FY2007 issue. The Chief Administrative Judge reports that the courts are examining the use of ROR (Release on Recognizance) for non-violent arrestees.

**c. *End Protective Custody for Detoxification***

*The Report urged the ending of the use of Correctional bedspace for detoxification and protective custody of incapacitated persons. The Report recommended increased resources for secure drug detox and mental crisis programs.*

**Response:**

The continued use of Vermont Correctional Facilities for the detoxification of inebriated persons who have not committed a crime is completely inappropriate, and unsupportable because of danger to the persons lodged, the lack of medical and skilled substance abuse professional staff, lack of supervision, and the lack of adequate space. Moreover, this use is a contradiction of role and function of a correctional facility. Not only are the facility booking areas (where persons in Protective Custody are lodged because it is the only unit where constant observation is possible) not equipped as medical detoxification units, but the staff are not trained or accountable for the degree of expertise necessary for these persons. More importantly, the Department has no authority over the persons so lodged, and can only house for 24 hours, regardless of the condition of the individual. This is a dangerous and unacceptable circumstance, that is repeated several thousand times a year.

The appropriate placement for these individuals is in a health care facility, emergency room, or detoxification facility which is staffed and equipped to handle the issues presented.

**d. *Expedite Resolution of Probation Violations***

*Finally, addressing the use of detention for probation violations, the Report urged the speedier resolution of these cases.*

In Fiscal Year 2004, there were 120 persons on probation who were incarcerated for technical violations of their probation. An additional 145 persons who were found in violation of the terms of probation were not incarcerated, either being continued on probation or having their probation case closed. A total of 1,251 persons on probation were found in violation probation by virtue of having committed a new criminal offense.

Of them, 446 were incarcerated while 805 were not. While these numbers are less than ten percent of all of the persons detained, many of these offenders were held without bail. These numbers are not included in the "Detainee counts," since these offenders, if they are lodged, are categorized as S/D (Sentenced and Detained) rather than simply D (Detained). The number of persons lodged as S/D has been decreasing, which while not definitive, indicates that the courts are processing these cases more quickly.

<b>Probation Violation Dispositions – Fiscal Year 2004</b>			
<b>Type</b>	<b>Technical Violation</b>	<b>New Crime Violation</b>	<b>Total</b>
Split Sentence	31	163	194
Sentenced	89	283	372
Closed	31	163	194
Continued	114	642	760
<b>Total</b>	<b>265</b>	<b>1251</b>	<b>1520</b>

With more than 80% of violations resulting from new charges, expediting the prosecution of the charges should reduce the numbers of persons held without bail for violations.

**General Response to Recommendation 2:**

These recommendations are generally outside of the purview of Corrections and the Executive Branch.

While progress is being made in the processing of detainees in the courts, and the number housed on a given day is coming down, the increasing raw numbers of persons being detained continue to be troubling. There were about 4,635 different people detained in Vermont jails during the 12 months from December 2003 to November 2004. This is 13% higher than the number lodged in the previous fiscal year. What this increase in volume in light of decreased daily population means is that the system is processing people more efficiently, not diverting people from detention. It is of concern is that this volume can very quickly increase the bedspace demand if constant attention to the court backlog is not maintained. It is also of concern that the numbers of women detained annually has increased much faster (54% vs. 30% in three years) than the number of men.

**Total Persons Detained\***  
(unique individuals)

<b>Gender</b>	<b>FY2001</b>	<b>FY2002</b>	<b>FY2003</b>	<b>FY2004</b>
<b>Male</b>	2668	3080	3281	3495
<b>Female</b>	394	482	580	606
<b>Total</b>	3062	3562	3861	4101

\*Numbers do not include persons both sentenced and detained.

In this regard, the Commission Report recommends that “the system” change practice in two major regards. First, to cease using detention simply to house troublesome (not dangerous) persons on weekends, or prior to arraignment. This will require coordination of all law enforcement agencies, including local police, sheriffs, and Vermont State Police in the providing alternatives to arrest and detention.

Second, the Report recognized the most fundamental issue concerning detention is in the setting of bail and the conditions of release. The Commission recommendation that Release on Recognizance once again become the first response to non-violent misdemeanor charges would contribute reducing the use of correctional bedspace for pre-arraignment detention.

**Recommendation 3. Find ways to discharge people who are ready to be discharged.**

*The Overcrowding Commission found that there were a large number of inmates currently held in Prison who could be released to less costly alternatives in the form of half-way or transitional housing. At any one time, over 100 offenders are incarcerated who have completed all requirements for release, but have no approvable housing.*

*The Commission made several recommendations with regard to strategies to discharge offenders.*

**a. Establish Pre-release Centers**

*First, the Commission recommended the expansion of funding and authority for the Department to provide housing for offenders in pre-release centers to be located in communities where offenders are returning. The Commission recognized the complex issues surrounding the siting of such facilities, and urges the Department to work with the housing community to plan and secure adequate housing placements throughout Vermont.*

**Response:**

A first step toward that goal has been taken by the Department, in the establishment of a Housing Coordinator position, focusing initially on disbursing and managing the grants (next recommendation, below) to community agencies for transitional housing, and coordinating closely with AHS housing initiatives. This person is a member of the Governor’s Interagency Council on Homelessness, and the Discharge Planning Subcommittee of the Interagency Council and the Vermont Coalition to End Homelessness. In the longer term this position will create a Department presence among the community and state housing agencies.

The Commission recommended the development of “halfway houses” in addition to transitional housing. The Commission noted the primary obstacle to location of such facilities being local opposition to siting, and suggested that existing State properties, such as on the grounds of correctional facilities, be used.

Such housing, for offenders reentering communities after incarceration, could be located outside the secure perimeter on the grounds of some correctional facilities, and provide work and housing search opportunities for reentering inmates. The Department is currently establishing Reentry Units within the existing correctional facilities for offenders nearing release. The Department is seeking changes to Title 28 to enable these units to function most effectively.

In the longer term, the establishment of pre-release centers is worthy of further exploration. The Department will work with the Department of Buildings and General Services to develop a plan for the 2006 Session of the General Assembly.

**b. Enhance Transitional Housing Funding**

*Second, the Commission recommended that the Department make grants to communities to establish halfway houses, therapeutic residential communities, and supervised housing.*

**Response:**

The Legislature provided \$580,000 in FY2004, which was expanded to \$605,000 for FY2005. In FY2006 the Governor’s budget will call for expanding that sum by some \$400,000.

The funding for FY2004 provided for 75 beds through grants to community based organizations. FY2005 funding will provide for the Department to add an additional 80 community transition beds, to a total of 150+ beds available. The additional funding will provide full year costs for the transitional housing system.

***Transitional Housing Bedspace***

	<b>FY2004</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>
<b>Funding</b>	\$580,000 (Base)	\$605,000 (+\$25K)	\$1,005,000 (+\$400K)	\$1,025,000
<b>Bedspace Contracted</b>	75	80	155	155

The RFP's for additional transitional housing will include structured housing to include support and treatment targeted at issues of substance abuse and mental health, as well as workforce preparation. (See attached detailed report on the current status of transitional housing.)

**c. *Increase Support for Housing and Employment Searches***

*The Commission recommended that barriers which impede inmate reentry be removed, and suggested the establishment of no-cost telephone and stamp privileges for inmates, housed both in Vermont and out of state, to facilitate housing and employment searches for the offenders while confined.*

**Response:**

Title 28 V.S.A., Section 802a, requires a debit system for inmate telephone calls, and funding restrictions on providing stamps to inmates initiated last year combine to form a barrier to inmates contacting the outside work and housing providers prior to release. A more fundamental barrier, however, to work search and reentry transition is the restriction on furlough, which will require legislative change to Title 28 V.S.A., Sections 723, and 808, to allow release for work and housing search. These changes are discussed more fully in response to later recommendations of the Commission.

The Department is working with the Agency of Human Services and the Department of Children and Families to expand a program begun with North East Kingdom Community Action to provide support for housing placement and retention, in a collaborative relationship with landlords and employers.

**d. *Out of State Contract Requirements***

*The Commission made several recommendations regarding greater access for inmates housed out of state to opportunities for equivalent programs and opportunities to secure jobs, earn good time, and complete case plan requirements to be eligible for release.*

**Response:**

All of the inmates housed out of state do indeed have case plans. In particular, those inmates who are beyond their minimum release have had the opportunity to participate in programs, but have chosen not to conform to the requirements of behavior for these programs, or have elected not to participate. Inmates do earn good time for performing work in the out of state facilities under contract. In fact, if the programs are not available, inmates automatically earn any credit available. It is important to note that good time for most inmates sentenced after 2000 reduces the maximum, not the minimum term served, due to "Truth in Sentencing" legislation passed in Act 61 in the 2001 session.

**e. Better Sentence Computation**

*The Commission noted testimony to the effect that sentence computations are sometimes wrong, and recommended that the Department periodically audit the computations, and consider automation of the calculations.*

**Response:**

This is a complex issue. The Department already has an automated sentence computation system, in place. The issue is not the computation of sentence, but the calculation of the myriad forms of Good Time, Earned Time, Meritorious Credit, Credit for Time Served, and the interaction of the four statutory schemes for crediting time off each sentence that create different rules for calculation, depending on which sentence, for which crime, committed under what statutory framework. Since most inmates are serving sentences for more than one crime or violations of previous convictions, the effects are interactive. This complexity is compounded by the requirement under the law that the award of the various time credits be updated monthly. In effect, this results in the re-computation of the time to serve for 1,600 sentenced inmates and 400 detainees (detainees receive credit that is calculated in anticipation of their being sentenced), every month.

It is not surprising that the inmate grievance system is flooded with protests over inmates not receiving the correct computation of credit. The calculation, recalculation, and grieving of alleged miscalculations is in fact a cottage industry within the walls of the correctional system, occupying caseworkers, clerical workers, supervisors, managers, and attorneys in an endless paper chase. The system of awarding credit loses much of its intended meaning as an incentive for behavior, and often can become a game to consume time and energy.

It would be far simpler, and less adversarial, to completely abolish the whole practice. The incentive for good behavior would become the minimum sentence of incarceration. Bad behavior, or failure to participate in programming, would lead to serving beyond the minimum release date, up to the maximum sentence.

The abolition of all good time could be accomplished by statutorily awarding all possible credit to all offenders, whether earned or statutory. Then the matter of constant recalculation of sentence computation would be eliminated. It would be done once, at admission, and would remain fixed, unless behavior while incarcerated merited further prosecution for criminal behavior. Sentencing from that point on would be universal – all sentences would mean what they say.

This is based on a principle, that correctional officers and administrators should not be involved in altering the sentence. That is the prerogative of the court, and the parole board with regard to the maximum term. The good order and discipline of correctional facilities results from the fair administration of privileges, not the presence of a so-called incentive. In fact, since 99% of all good, earned, meritorious, and other credit is

awarded in any regard to relieve crowding, the only purpose served by the system is the denial of good time for a very few inmates, serving only to increase, not decrease crowding.

A more stabilizing factor would be the date-certain knowledge for inmates of their eligibility for return to the community under the conditional reentry status prior to parole as the final stage of serving out the maximum sentence in the community.

The legislature made a significant step forward in the Conditional Reentry statute passed in 2001, which began to define the purposes for the minimum and maximum sentence. Conditional reentry into the community upon serving the minimum term of the sentence is the presumption, and the expectation. To move further in this direction would make the success of the offender in the community during a term of conditional reentry presumptively followed by parole, after a definitive period. If an offender has demonstrated positive behavior in the community, that should be recognized by reduction in supervision to parole. An additional improvement would be to permit the furlough of inmates to perform work search, housing development, community service, or participation in community treatment as part of the reentry process, during a period up to 90 days prior to the minimum sentence release date.

**Recommendation 4.      Create alternatives to incarceration for women**

*The Commission noted the dramatic growth in the population of incarcerated women, growing at twice the annual rate of increase as that for men. The Commission also noted that the offenses for which the women are incarcerated are largely non-violent, and that a very large proportion of the women inmates have serious substance abuse and co-occurring mental health issues, for which incarceration is often counter-productive. The costs of incarceration of women are often increased due to the added costs of caring for their children, either by relatives or, in many cases, by the State.*

*The Commission recommended that there be created 150 placements for treatment purposes for non-violent women who are currently incarcerated. These placements would be assigned as a condition of probation.*

**Response:**

The Agency of Human Services has created a new residential treatment program for substance abuse for women and youth, the Valley Vista program in Bradford, Vermont. This program will provide up to 40 beds for women offenders when it is fully operational. There are currently (1/4/05)16 women from the Department at the facility, nearly all of whom were formerly incarcerated.

In addition, the Tapestry Program for Family Reunification at the Brattleboro Retreat currently has 17 beds for women offenders in recovery, and is used as a treatment reentry facility for women leaving correctional facilities.

In FY2006, the Governor will recommend an increase to the Department of Corrections funding for Substance Abuse treatment in the amount of \$150,000, to expand community-based treatment for offenders. If possible, this funding will be increased by the leveraging of Medicaid dollars for community residential treatment in coordination with the Department of Health.

The Department, in collaboration with Northern New England Tradeswomen, and Mercy Connections, Inc., has established a pilot program of mentoring and community support for women reentering the community and workforce. This grant-funded program, called "the Women's Mentoring Program," has achieved positive results.

The restructuring of the Agency of Human Services will effect a collaboration with the Department of Children and Families, targeting women offenders with children as a High-Risk family, focusing resources on their needs, and the Department of Health focusing on Mental Health and Substance Abuse treatment needs. The successful programs for co-occurring disorders may be adapted for the specific needs of women offenders, and expanded. The Department is also exploring using a "foster care" model with certain women to provide wraparound support and supervision in the community for the offender and her children.

It is of concern that current Federal regulations require that the Department of Children and Families begin permanency planning for children of women incarcerated for more than 18 months. The Termination of Parental Rights (TPR) can have devastating impact on the incarcerated mothers. The Department of Corrections needs to work more closely with the Department of Children and Families to ensure best outcomes for the women as well as the children.

***Recommendation 5. Create Lower Cost Work Camps: a Cost Effective Option Over Time***

*The commission recommended the establishment of three additional work camps modeled on the successful Caledonia Community Work Camp in St. Johnsbury.*

**Response:**

The Governor has requested \$400,000 in capital bonded funds for FY2006 to begin site selection and engineering design for a second Work Camp, followed by construction funding in FY2007, to establish a 100-bed work camp, to be located either in the Rutland/Bennington area, or in Chittenden/Franklin Counties.

In future years, additional Work Camps will be requested in response to growth in the population. A concept worth exploring for future Work Camps is that of combining the

work camp with offender reentry, such that inmates reentering the community would be transferred to a Work Camp prior to completing their sentence, for work habit training as well as gradual release to work search and work release. In addition, the creation of capacity for a work camp capacity designed for women offenders is a highly appropriate response to the growing numbers of women being incarcerated.

**Recommendation 6. Restructure Probation to be Term Limited**

*The commission made several interconnected recommendations with regard to term limited probation.*

**a. Give judges the statutory authority to suspend fines and/or place offenders on work crews.**

*In addressing the caseload overburden of Probation, the Commission recommended that judges have two new statutory authorities: first, to suspend the imposition of a fine, contingent on behavior; and second to place an offender on a work crew in lieu of incarceration or probation.*

**Response:**

Both of these changes are positive. The first authority would change the consequence of violation of probation to the imposition of the suspended fine, not incarceration. This would likely result in large numbers of such sentences, particularly for non-violent misdemeanors, currently the vast bulk of current probation sentences. The immediate reduction in probation caseload is not likely to be great, but the consequence of violating probation would not be incarceration, and the long-term result will be a reduction in demand for incarceration. The legal status for these offenders would need to be defined.

The Commission recognized that the second authority would likely require changes in statute allowing a sentence of Pre-Approved Furlough with community restitution (work crew) as an alternative to mandatory short sentences, and would require some additional resources for the operation of supervised work crews in the community. As a result, the Department of Corrections is looking to the end of sentence as the access point for participation in the Work Camp program. They recommended that this authority be given in the context of additional work camps, which could supervise the crews.

The Commission also recognized that this could “widen the net,” resulting in increased numbers under supervision, if judges had the authority to sentence to work crews.

In its planning for the operationalizing of Work Camp II, the construction costs for which will be included in the FY2006 and FY2007 Capital Requests, the design and staffing structure for the new facility will incorporate additional work crews. In addition, any

design for a new work camp should include capacity for housing offenders with longer sentences.

**b. Expand term probation to felons**

*The Commission recommended that probation term limits, put in place by the 2004 General Assembly as a 2-year term limit for misdemeanors, be extended to suspended sentences for felonies, and that the term be reduced to one year. This would involve judges setting a fixed term for supervision, extended only on petition of Corrections.*

*In addition, the Commission recommended that all current probation cases be reviewed annually, with the requirement that Corrections show cause for continuing the status, and in the absence of good cause, the person would be discharged from probation.*

**Response:**

The Department agrees with the concept of term limits to probation. Given that the term limits for probation on misdemeanors only went into effect in July, 2004, it is too early to determine impact on sentencing or caseload. We should wait to evaluate the impact on misdemeanors before broadening the statute to include felons. It is also important to consider the programmatic need for continuing supervision of some sex offenders without term limit. A first step to consider for expanding the concept might be for non-violent felons.

**c. Eliminate the use of probation to collect fines and fees**

*The Commission stated that Probation should not be used for this purpose.*

The Department agrees with the statement. However, an alternative structure for collecting these revenues must be in place before probation ceases collections. The Department has advocated for several years that all State Government collections be centralized in one State agency, a Department of Revenue. This would provide for more efficient collections, and would likely increase amounts collected.

**d. Review the operations of probation, considering caseload caps**

*The Commission recommended a thorough examination of the policies, practices, and procedures with regard to probation supervision.*

**Response:**

To implement this set of recommendations, as well as the following one, *Recommendation 7*, requires comprehensive review of the structure and operation of Probation in law as well as practice. The administration, perhaps with the leadership of the Governor's Criminal Justice Cabinet, should conduct a comprehensive study of

probation, involving national experts in the administration of probation, to design a model system and develop a plan.

**Recommendation 7. Consider Moving Probation Services to the Judiciary**

*The commission made two additional recommendations for a restructured probation:*

**a. Examine the purpose of Probation toward creating a different structure**

*The commission did not make a specific recommendation, but recommended further study.*

**Response:**

Consistent with the response to the previous recommendation, a comprehensive review of Probation is in order. We may want to wait until the results of other strategies (e.g. , term probation) are in place prior to moving to this step.

**b. Consider adoption of the Model Criminal Code**

*Again, the Commission did not endorse the model of the American Law Institute, but recommended further study.*

**Response:**

The categorization of criminal offenses by the differential response to the severity and reparability of harm done, as well as risk posed by the offender, is consistent with the legislative direction established in the 2000 Session in 28 V.S.A. Sec 2, Restorative Justice, in setting the policy that non-violent misbehavior be resolved at the level of community and neighborhood, with non-adversarial process. Preliminary reports from Community Justice Centers in St. Johnsbury, Burlington, Winooski, Newport, and a program in Hartford, and elsewhere show positive reductions in court caseloads and citizen involvement.

Creation of a different response to misdemeanor offenses, providing a community based restorative justice process for misbehaviors shows great promise as the establishment of local Community Justice Centers increases. In the long run, empowering citizens to respond to conflict and dispute that do not rise to the level of threat or danger to others can only prevent crime and divert offenders from State intervention.

**Recommendation 8.      Removal of Non-Dangerous Offenders from Correctional Institutions**

*The Commission made a number of recommendations identifying populations currently incarcerated which could be managed in less restrictive and less costly settings. These included Motor Vehicle offenders, particularly those convicted of repeat DUI; other offenders sentenced to weekend incarceration; offenders with substance abuse issues; and incapacitated persons.*

*The Commission recognized that these populations are prime candidates for the work camp, but should be diverted to non-incarcerative sanctions and treatment alternatives.*

*The Commission also strongly recommended the abolition of mandatory sentences for all offenses, including but not limited to DUI.*

**Response:**

The expansion of non-incarcerative options already in use by the Department, to include police diversion, community justice, community treatment, work crews, and other alternatives is a function of resources. The bind that is recognized by the commission is that the resources that might otherwise go to expanding these alternatives are currently going to house offenders out-of-state, as a result of sentencing practices which have created the overcrowding. The creation of additional non-incarcerative options requires initial investment.

For example, the legislature could create alternatives to short-term mandatory incarcerative sentences, to include service on work crew under Pre-Approved Furlough, for classes of offense that are not violent.

**Recommendation 9.      Restore “earned” Good Time**

*The Commission believes that the so-called “truth in sentencing” law that eliminated the earning of credit toward the minimum sentence is a root cause of overcrowding. As a result, the Commission recommends the reinstatement of “earned” good time.*

**Response:**

While the Commission's belief that the change in law eliminating earned good time from the minimum sentence is responsible for overcrowding, the Department does not support this recommendation (see 3e, above). The change in law that is likely more responsible was passed two years after the change in good time, and created the status of conditional reentry. This law (Act 61 of the 2001 session) eliminated the discretion of the commissioner of corrections to release offenders on furlough prior to their minimum term of incarceration. It is this change, more than the elimination of good time from the minimum, that has both fueled overcrowding and hampered reentry preparation prior to minimum release

The Department has drafted a revision to the furlough statute (28 V.S.A. Sec 808) that would provide the ability to allow offenders to participate in work release, placement at residential treatment, or other reentry programming, to include structured transitional housing, under supervision within 90 days prior to reaching the minimum sentence.

This revision, combined with increased access to structured transitional housing, would provide for the orderly transition of offenders to the community, allowing the offender to participate in the activities most likely to assure successful reintegration. The Department is moving to establish re-entry units in all of the nine correctional facilities across the state. These units would house offenders during the transition to reentry, providing activities to facilitate success in obtaining housing, employment, and training and education, and reconnecting with support networks close to home. The re-entry units will also provide the opportunity for community members to participate in structuring the supportive and accountability mechanisms to assure the offenders become good neighbors. However, it is critical to the success of the reentry process that offenders be allowed to be released to the community, gradually and under supervision, while they find a job and a place to live.

***Recommendation 10: The Major Construction Alternative – Establish a 400-bed Detention Facility for Statewide Use in an Optimal Location***

*The Commission, in recognizing that the measures recommended may not be sufficient to reduce crowding in themselves, or that they may not be implemented comprehensively, noted that construction of new incarceration bedspace may be necessary. If so, the Commission recommended that a 400-bed detention facility be built, at an estimated cost of \$35 million.*

**Response:**

The department agrees with the Commission. However, the cost of such a facility alone, as well as the length of time necessary for siting and construction, make it imperative that the State continue the measures it has begun and move forward with careful planning to implement the most effective new resources as soon as possible, to both maximize the reduction in incarceration while at the same time minimizing risk to the community.

**Recommendation 11. Miscellaneous**

**a. Encourage transfer to the federal system**

*The commission recommends that the small number of Vermont inmates serving concurrent Federal sentences be transferred to the Federal system.*

**Response:**

This is a complex issue. The commission learned of this issue from its interviews with offenders. There are some inmates in the Vermont system who are serving Federal sentences as well as Vermont sentences. Typically, these are inmates who were convicted of serious crimes and received long Vermont sentences. Because the crimes were committed with firearms, these offenders received federal sentences, usually consecutive to the Vermont sentence, and usually shorter than the Vermont sentence. Since the Vermont sentence was imposed first, and is the longer, it is the controlling sentence and determines jurisdiction. The Federal government will take these inmates, but insists on charging a per diem that is greater than the cost of housing them out of state.

**b. Examine the appropriate role of Victims**

*The commission noted that the Vermont Criminal Justice System should not be driven by individual retribution, but should focus on the needs of society as a whole.*

**Response:**

We interpret this recommendation as directed at courts and prosecution more than at the Department. The Department has significantly expanded the communication and coordination of strategic and daily operations with victims, victim advocates, and families. It is clear that the needs of victims of crime for services from the State and Community have not been addressed comprehensively. The model that holds the most promise is the development of a parallel system of justice and services for victims, with the community taking responsibility for those services.

**c. Establish a system of extended sentence review**

*The Commission recommended that a system allowing review of the sentence by the Parole board upon application and upon determination of good and sufficient reason for reconsideration, that the Board make recommendation to the court, which would take independent action.*

**Response:**

This recommendation may require further study. This recommendation might have an unanticipated consequence of inviting litigation in individual cases which have already been addressed. If a more specific standard is defined, such a practice might allow some offenders who have completed all program requirements and who pose low risk of re-offending to have their sentence reconsidered.

**d. Support for offenders from other directions**

*The Commission recommended that the Department of Corrections proceed with initiatives in Workforce Development in collaboration with Employment and Training and Vocational Rehabilitation.*

**Response:**

The Department is proceeding with these efforts. In support of the initiative, the Federal Department of Education has awarded Vermont Corrections a multi-year grant of some \$1 million to establish workforce development programs in correctional facilities. This work is underway.

This program is being established in three facilities under the grant: the Southeast State Correctional Facility (in Windsor), Northwest State Correctional Facility (in St. Albans), and Northern State Correctional Facility (in Newport). The program focuses on integration of the efforts of the entire facility. The teachers from the Community High School of Vermont, the Caseworkers from the facility, the Security Staff from the program units, and the staff from the Offender Work Programs, have all been trained together to implement a unified program of life skills that emphasizes workforce skills. The Program concentrates all of their efforts on keeping the goal of developing successful workers foremost. These staff, and the inmates of the programs in the facilities, will all work from the same curriculum. The plan is titled "Habits of Mind" and is a life skills development program that results in offenders ready to work, ready to learn, and ready for the community.

In addition, with the help of federal funds, the Departments of Vocational Rehabilitation, Employment and Training, and Corrections are all participating in cross training to support offenders reentry and job acquisition and retention. We are also working in other facilities, to include the Dale facility, with the Northern New England Tradeswomen's Association, in developing workforce mentoring programs to facilitate the release of women inmates to job and housing opportunities.

## ***SUMMARY OF RESPONSE***

The Commission report makes a number of positive and potentially productive suggestions. Thoughtful implementation of their recommendations, with the cooperation and support of all three branches of government, local and State law enforcement and the States' Attorneys, and the active involvement of the communities and citizens of the State, holds promise for achieving the goal of the Commission. By reducing the State's reliance on out of state housing of Vermont offenders, by providing safe and effective means for carefully reducing the prison population, and by increasing the capacity of the system in state, the Department of Corrections will be able to more effectively carry out its mission and achieve the goals and objectives of the Department.

There are clear resource implications to many of the recommendations of the Commission, that will require attention in this and subsequent budgets and capital appropriations. However, it is clear that the cost of not acting is much higher, and unsustainable.

## ***Appendices***

<b>I.</b>	<b>Department Mission, Vision, Goals and Objectives</b>	<b>(p. 20)</b>
<b>II.</b>	<b>Transitional Housing Report</b>	<b>(p. 23)</b>
<b>III.</b>	<b>Proposed Statutory Changes to Furlough</b>	<b>(p. 26)</b>
<b>IV.</b>	<b>Federal Permanency Planning Rule</b>	<b>(p. 29)</b>
<b>V.</b>	<b>Community Justice Centers</b>	<b>(p. 33)</b>
<b>VI..</b>	<b>Proposed Statutory Changes to Reduction in Time Served</b>	<b>(p. 37)</b>

# **Appendix I**

## **Vermont Department of Corrections**

### ***MISSION STATEMENT:***

The Vermont Department of Corrections, in partnership with the community, supports safe communities by providing leadership in crime prevention, repairing the harm done, addressing the needs of crime victims, ensuring offender accountability for criminal acts, and managing the risk posed by offenders. This is accomplished through a commitment to excellence that promotes continuous improvement, respect for diversity, legal rights, human dignity, and productivity.

### ***VISION STATEMENT:***

“To be valued by the citizens of Vermont as a partner in the prevention, research, control, and treatment of criminal behavior.”

# FY2005 Strategic Plan

## **Department Goal:**

Communities provide safety and support to families and individuals<sup>1</sup>

## **Customer Outcomes:**

- Offenders are safe
- Communities are involved
- Offenders are responsible
- Communities are repaired
- Victim needs are addressed

## **Fundamental Strategies (Source: Title 28)**

- 1. Reserve Prison for dangerous, violent, and repeat felony offenders**
- 2. Build community capacity for offender accountability with Restorative Justice Principles**
- 3. Transition offenders successfully to the community**

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<sup>1</sup> This is AHS Outcome #10

# Objectives for FY 2005

June 18, 2004

1. **Implement Reentry and ORP**
  - A. Establish Reentry Programs in Facilities and Field Offices
  - B. Create Facility, Field, and Community Justice Center linkages
  - C. Expand linkages to victims communities
  - D. Create and expand linkages to Workforce Development
  - E. Implement and expand Transitional Housing.
  - F. Ensure Offender Access to reorganized AHS services.
2. **Community Justice Centers**
  - A. Establish more community justice programs
  - B. Engage Community Justice Centers in reentry
  - C. Increase numbers of Community Justice Centers
3. **Implement Community Collaborative Supervision**
  - A. Continue to build partnerships with communities
  - B. Strengthen partnerships with courts, police, and community justice
  - C. Further evolve Reparative Probation
4. **Initiate Workforce Development Integration with Reentry**
  - A. Create facility demonstration programs (Habits of Mind)
  - B. Integrate workforce development with traditional programming
5. **Create a Strategic Plan for Gender Responsivity**
  - A. Establish NIC Plan
6. **Improve Performance**
  - A. Restructure Central Organization
  - A. Improve Quality Assurance
  - B. Increase public involvement
  - C. Create Policy Transparency
  - D. Increase Accountability
  - E. Increase Capacity
  - F. Develop comprehensive IT plan
  - G. Improve Staff Recruitment, Development and Retention
7. **Implement Facility and Field Restructuring**
  - A. Facility Roles: Restructure units and Separate populations
  - B. Implement Accreditation Process for ACA; Continue NCCHC
  - C. Field Roles: Establish single leader descriptions; create plan for restructuring.
8. **Improve Health and Mental Health Services Delivery**
  - A. Establish new contracts
  - B. Create new Mental Health Plan
9. **Improve Criminal Justice System Collaboration**
  - A. Improve consistency with courts at state and local levels
  - B. Address caseload reduction strategies
  - C. Create a Communication and Public Relations Plan

## Appendix II

### Vermont Department of Corrections *Transitional Housing*

Current Bed Capacity by Region

Region Of State	Adult Male	Adult Female	Youth Male (under 22)	Youth Female (under 22)
<b>Southeast</b> Windsor/ Windham		4 structured/ substance abuse Phoenix House Brattleboro	5 structured Middle House Bellows Falls	
<b>Southwest</b> Bennington/ Rutland/ Addison			10 structured Seall, Inc. Bennington	
<b>Central</b> Washington/ Orange/ Lamoille		1 reunification Central Vt Comm Action Barre	10 structured (planning) Wash. Co. Youth Services Barre	
<b>Northeast</b> Caledonia/Orlean s	10 structured/ Substance abuse NEKCA Newport(4), Covered Bridge, St. J.(6)	4 structured/ substance abuse NE Kingdom Comm Action, St. J.		
<b>Northwest</b> Chittenden/Franklin	6 structured (3 planning) Dismas, Burlington 21 Section 8 Vouchers (male & female) Burlington		4 structured Spectrum, Burlington	
TOTALS	37	9	29	

**TOTAL 75 CURRENT (October 20, 2004) FUNDED CAPACITY**

Phase II RFP  
Transitional Housing Proposal

On any given day, there may be up to 150 individuals in Vermont correctional facilities who are past their minimum sentence and whose primary barrier to release is housing. Taking into account these numbers as well as the findings of the Governor's Commission on Prison Overcrowding, the Department makes the following proposals for additional transitional housing:

Region	Adult Male	Adult Female	Youth Male	Youth Female
Brattleboro	4 structured up to 180 days			
Rutland	8 structured up to 180 days	6 structured 180 + days		
Wilmington	8 structured up to 180 days			
Central Vt	8 structured up to 180 days 4 special needs 180 days +	6 structured 180+ days		
Franklin	6 structured up to 180 days 4 special needs 180 days +			
Chittenden	10 structured up to 180 days 5 special needs 180 days +	12 to include 2 youth and 2 mental health 180 days +		
Total	57	24		

**TOTAL PROPOSED 81 BEDS**

## **OTHER PROPOSED TRANSITIONAL SERVICES**

In addition, the Office of Economic Opportunity, via North East Kingdom Community Action, provided housing placement and retention services to 37 offenders from 10/1/03 through 9/30/04 with the following results: 16 in stable housing from 1 to 5 months, 9 in stable housing for 6 months or more, 4 in temporary housing, 5 not yet released from incarceration, 1 returned to incarceration, 1 deceased. Given the efficacy of this program, we propose extending this contract through 6/30/05 and replicating it in at least one other county in Southern or Central Vermont.

In order to better serve the needs of female offenders, we propose funding a "Foster Family" pilot program that would offer modified mentoring situations to women/families for 3-6 months following reentry. We would explore collaboration with the Department for Children & Families around training/licensing/reimbursement issues.

## **Appendix III**

### **Proposed Statutory Changes: Reduction in Term**

2/14/05 pm

**SUBJECT: CORRECTIONS; SUPERVISION OF ADULT INMATES; REDUCTION OF TERM FOR GOOD BEHAVIOR**

**Statement of purpose: This bill proposes to restructure the award of crediting time served for sentence.**

AN ACT RELATING TO REDUCTIONS OF SENTENCE, TRANSPARENCY IN SENTENCING, AND OVERCROWDING OF CORRECTIONAL FACILITIES

#### **Findings:**

##### **The General Assembly finds that**

1. The form and practice of sentencing to terms of incarceration, and the reduction of those terms is inordinately complex, leading to inaccuracies and unfairness of the administration of justice;
2. All citizens, including victims and families of victims, offenders and their families, as well as the personnel of the criminal justice system, would benefit from certainty and clarity of the effect of sentences on individuals;
3. The uncertainty of the effect undermines the intention of the general assembly to provide an incentive for inmates to participate in programs to reduce their risk to reoffend;
4. The use of correctional facilities must be reserved for housing those offenders who pose risk of harm to others.
5. Overcrowding of correctional facilities must not be a reason to release offenders who pose such risk prior to serving the sentence imposed by the court.

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

#### **Sec. 1. 28 V.S.A. § 808 is amended to read:**

##### **§ 808 Furloughs granted to offenders and inmates; medical furlough**

(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. [All] The inmate[s] 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. 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 re-offend or that provide reparation to the community in the form of supervised work activities.

(8) For the purpose of screening, assessment and participation in community non-residential programs in preparation for conditional re-entry;

(9) To begin employment prior to discharge; or,

(10) To prepare for conditional reentry or parole, offenders serving a minimum sentence of less than two years may be furloughed to the community up to 90 days prior to the completion of the minimum sentence, in accordance with rules promulgated by the commissioner based on factors of risk of reoffense, history of violent behavior, history of compliance with community supervision, and progress in treatment programs designed to reduce criminal risk.

(b) An inmate granted a furlough pursuant to this section may be accompanied by an employee of the department, in the discretion of the commissioner during the period of his furlough.

(c) The extension of the limits of the place of confinement authorized by this section shall in no way be interpreted as a probation or parole of the inmate, but shall constitute solely a permitted extension of the limits of the place of confinement for inmates committed to the custody of the commissioner.

(d) When any enforcement officer, as defined in section 4 of Title 23, employee of the department, or correctional officer responsible for supervising an offender believes the offender is in violation of any verbal or written condition of the furlough, the officer or

employee may immediately lodge the offender at a correctional facility or orally or in writing deputize any law enforcement officer or agency to arrest and lodge the offender at such a facility. The officer or employee shall subsequently document the reason for taking such action.

(e) [The commissioner may enter into and execute a contract with authorities in other states for the furlough of any inmate from any facility to another state when, in his opinion, the inmate needs special treatment in the other state or for a particular reason consistent with the rehabilitation of the inmate.]

[(f)] **Medical furlough.** The commissioner may place on medical furlough any inmate who is serving a sentence, including an inmate who has not yet served the minimum term of the sentence, who is diagnosed as suffering from a terminal or debilitating condition so as to render the inmate unlikely to be physically capable of presenting a danger to society. The commissioner shall develop a policy regarding the application for, standards for eligibility of and supervision of persons on medical furlough. The inmate may be released to a hospital, hospice, other licensed inpatient facility or other housing accommodation deemed suitable by the commissioner.

[(g)](f) **Treatment furlough.** The department may place on furlough an inmate who has not yet served the minimum term of the sentence, provided the approval of the sentencing judge is first obtained, who, in the department's determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the inmate's risk to re-offend or cause harm to himself or herself or to others in the facility. [The inmate shall be released only to a hospital or licensed inpatient treatment facility that provides services to the general population. The state's share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.]

Added 1971, No. 199 (Adj. Sess.), § 20; amended 1973, No. 48, § 6; No. 109, § 12; 1973, No. 205 (Adj. Sess.), § 4; 1997, No. 152 (Adj. Sess.), § 9; 1999, No. 29, § 55, eff. May 19, 1999; 2001, No. 61, § 88, eff. June 16, 2001; No. 149 (Adj. Sess.), § 41, eff. June 27, 2002.

## **Sec. 2. 28 V.S.A. § 811 is amended to read:**

### **§ 811. REDUCTION OF TERM FOR GOOD BEHAVIOR**

It is the intention of the General Assembly that sentences to terms of incarceration be carried out as imposed by the court, that offenders who participate in treatment and who demonstrate reduced risk to public safety, be released to the community and that

offenders, the public, and victims of crime have a clear understanding of the effect of the sentence and the time to be served.

(a) After July 1, 2005, all inmates in the custody of the commissioner of corrections shall be awarded all reductions in term consistent with the provisions of this section that were in force when each sentence was imposed. The minimum and maximum terms of sentence shall be calculated to include all forms of reduction in term and established as the sentence minimum term to be served and sentence maximum term to be served. All future reductions shall be awarded, and may not be denied. All past accumulations of reduction or forfeitures shall be included in the calculation.

(b) All offenders convicted after July 1, 2005, of any offense punishable under statute shall be sentenced to a term consistent with Title 13, sec. 7031 and sec. 7032. The sentence imposed shall not be reduced, except as defined herein.

(c) Work camps. Notwithstanding subsections (a) and (b) of this section, a reduction of up to 30 additional days in the minimum and maximum terms of confinement for each month served at a work camp during which the inmate demonstrates consistent program performance or meritorious work performance may be earned in accordance with a policy established by the commissioner of corrections.

**(d) [Existing Statute Here -- all to be repealed]**

[(a) Each inmate sentenced to imprisonment and committed to the custody of the commissioner for a fixed term or terms shall earn a reduction of five days in the maximum term of confinement for each month during which the inmate has faithfully observed all the rules and regulations of the institution to which the inmate is committed.

(b) A reduction of up to ten additional days in the maximum term of confinement for each month may be made if the inmate participates in treatment, educational or vocational training programs or work identified by the department to address the inmate's needs. If the inmate refuses to participate in such programs or work identified by the department to address the inmate's needs, but participates in other treatment, educational or vocational training programs or work, a reduction of up to five additional days in the maximum term of confinement for each month may be made.

(c) Any inmate who agrees to participate in a treatment, educational or vocational program or work identified by the department to address the inmate's needs, but is unable to participate due to insufficient program opportunities provided by the department of corrections shall be awarded the maximum number of days' reduction in the maximum term of confinement allowable for the program opportunity denied the inmate.

(d) Work camps. Notwithstanding subsections (a), (b) and (c) of this section, a reduction of up to 15 additional days a month in the minimum and maximum terms of confinement may be made in accordance with a policy established by the director of a work camp in which the inmate is confined for each month during which the inmate demonstrates, beyond the level normally expected, consistent program performance or meritorious work performance.

(e) This section applies only while an inmate is committed to the custody of the commissioner and in no case while the inmate is on probation, parole or supervised community service.

(f) At least once monthly, each inmate committed to the custody of the commissioner shall be entitled to see his or her permanent file which shall record any reduction in the maximum term of confinement. If the inmate is not awarded the maximum allowable reduction in the maximum term of confinement in any given month, a written explanation for the denial of such reduction shall be included in the inmate's file. For an inmate confined in a work camp, the provisions of this subsection shall apply to both the minimum and maximum terms of the inmate's confinement.

(g) In no case shall the reductions to an inmate's sentence as provided for in this section result in the inmate's maximum sentence being less than the inmate's minimum sentence.

(h) Where the sentence is the unsuspended portion of a sentence imposed under subsection 205(a) of this title, it shall be treated as the minimum term of the entire sentence for purposes of this section.]

## Appendix IV

### TITLE I--REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

#### SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) In General.--Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that--

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

"(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

"(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for a child to safely return to the child's home;

"(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

"(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

"(ii) the parent has--

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

"(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

"(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

"(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with

subparagraph (D)--

"(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

"(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

"(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);".

(b) Definition of Legal Guardianship.--Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(7) The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term 'legal guardian' means the caretaker in such a relationship."

(c) Conforming Amendment.--Section 472(a)(1) of such Act (42 U.S.C. 672(a)(1)) is amended by inserting "for a child" before "have been made".

(d) Rule of Construction.--Part E of title IV of such Act (42 U.S.C. 670-679) is amended by inserting after section 477 the following:

**42 USC 678**

#### **"SEC. 478. RULE OF CONSTRUCTION.**

"Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D)."

#### **SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.**

(a) Requirement for Proceedings.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended--

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following:

"(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified

family for an adoption, unless--

"(i) at the option of the State, the child is being cared for by a relative;

"(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

"(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child."

(b) Determination of Beginning of Foster Care.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended--

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following:

"(F) a child shall be considered to have entered foster care on the earlier of--

"(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

"(ii) the date that is 60 days after the date on which the child is removed from the home."

**42 USC 675 note.**

(c) Transition Rules.--

(1) New foster children.--In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act--

(A) if the State comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

(B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) Current foster children.--In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall--

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than  $\frac{1}{3}$  of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time;

(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than  $\frac{2}{3}$  of such children as the State shall select; and

(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

(3) Treatment of 2-year legislative sessions.--For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

(4) Requirements treated as state plan requirements.--For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act.

**42 USC 675 note.**

(d) Rule of Construction.--Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.

**SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.**

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended--

- (1) by striking "and" at the end of subparagraph (E);
- (2) by striking the period at the end of subparagraph (F) and inserting "; and"; and
- (3) by adding at the end the following:

"(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard."

## Appendix V

### Community Justice Centers Status Report

While most of us in the Department have been engaged in the daily operations of running prisons and field services, a group of staff and managers has been conducting a quiet revolution in how Vermonters and their Corrections Department interact.

A few years ago, the Community Justice Center was an idea. Now, under the leadership of Dave Peebles, and folks like Carl Roof and Hans Johnson, not to mention the countless numbers of staff and concerned citizens at the local levels, there are now eight Community & Restorative Justice Centers in operation. There are full CJsCs in Barre, Brattleboro, Montpelier, Newport, Rutland, St. Albans, St. Johnsbury, and Winooski. There are planning grants out to Bellows Falls, Enosburg, Essex, Hardwick, Hartford, and Addison County. There are Restorative Programs in Hinesburg and Shelburne. Several other communities have expressed interest. Here's an update, by town.

**St. Albans** - Recently received a basic implementation grant to start a Community Justice Center. They have an acting director and are in the process of actually forming the center. Their initial services will include Reparative Probation and non-criminal neighborhood disputes. There is a pretty strong interest in offender reentry but since they are in the start-up phase, it will some time before they apply for a reentry planning grant.

**Burlington** - has a well established CJC directly connected to city government. The Center is a real drop-in center that offers several programs including Reparative Probation, adult pre-charge, and victim services such as free replacement of damaged car windshields and graffiti removal. The Center is presently working on creating a Youth Restorative Justice Panel to see juvenile pre-adjudication cases. The Center has handled 174 cases since January. An Offender Reentry implementation grant has recently been approved.

**Winooski** - has an established CJC, that operates as an extension of the Police Department. The full time coordinator has an office in the municipal building but there is no drop-in center. The center does Reparative Probation and pre-charge cases for adults and juveniles. They are especially proud of their pre-charge work. Of 41 juvenile cases, all but 8 completed agreements. 6 of the 8 completed agreements with Just Youth, thus only 2 wound up as referrals to Family Court. This Center has been developing an Offender Reentry proposal and hopes to receive City Council approval by the end of the month.

**Enosburg** - has a small planning grant to begin developing a restorative response to both community and school based issues. So far, school stakeholders seem to have a greater interest and have carried the effort forward. Recently, a school official who has

some familiarity and interest in restorative practices, is attempting to revitalize the planning effort

**Essex** - has a restorative program that handles both Reparative Probation and direct police referrals. For instance, in the last ten months they've successfully handled 13 juvenile pre-adjudication cases (age 15 and up). They've been unsuccessful at organizing a CJC, but this small program does the same kind of work that a CJC does and they do have a paid coordinator.

**Hinesburg** - Has a small restorative pre-charge program that handles cases referred by the police and does some work with the schools. The work is performed by a professional mediator.

**Shelburne** - Has a small restorative program that includes both Reparative Probation cases and direct police referral. The program uses a citizen board and has a paid coordinator that can employ other restorative methodologies.

**South Burlington** - Has expressed interest in applying for a restorative program/ CJC planning grant.

**Middlebury** - Has been in the planning grant stage for a year and a half. The select board will ask the voters whether to support a CJC at town meeting in March.

**Rutland** - has an established CJC with a full time paid coordinator, housed in the Police Department. They handle Reparative Probation cases but much of the Center's work is directed at prevention and supporting neighborhood community organizing. They have developed a juvenile pre-charge program.

**Brandon** - Will be submitting a restorative program planning grant within the next month or two. The town manager and the chief of police are interested. The select board gave the go ahead to develop the grant request but needs to officially endorse it once the request has been prepared.

**Newport.** Has an established justice center with director, admin person and reparative, school, juvenile outreach person. Operates reparative probation panels. Does some pre-charge according to an agreement established between justice center, states attorney office and diversion. Currently visiting each school in their area to offer restorative processes and training. Established a student restoration panel process in Canaan High School. Has an offender reentry planning group and will submit offender reentry implementation grant in near future.

**Morrisville.** There is citizen interest in looking into a justice center for their town We are recruiting a few more interested folks and we will then have a steering we committee to seek a planning grant. We did meet with the selectboard and provided information.

**Hardwick.** This town had a Safer Communities planning grant last year and used it for a series of focus groups and to establish a youth pre-charge program, run currently by Lamoille Diversion. There is a good steering committee and they are putting the finishing touches on a grant proposal for a mid-sized restorative program to include a reparative probation panel, pre-charge as existing, and other conflict resolution processes.

**St. Johnsbury.** Established justice center. They have an interim acting director. Also have admin person. Offer reparative probation, ordinance violation panel, women's legal clinic, and are part way through offender reentry planning grant work. Good strong newly formed citizen advisory board that I work with. Aware of and tied in with housing grant efforts and substance abuse grant work up there.

**Barre.** Established justice center with director, admin person and intern. Does reparative panels. Recently established pre-charge process with state's attorney and police. Will soon seek an offender reentry planning grant. Does some mediation for landlord tenant issues. Working closely with housing grant folks.

**Montpelier.** Pretty much the same as Barre. Also seeking offender reentry planning grant but not so quickly. Has held a number of forums for citizens, etc. Does reparative and pre-charge.

**Randolph.** Sputtering interest to establish some sort of steering committee to look into feasibility of a mid-sized restorative program for their town. They have two reparative panels in town and would like to do other restorative things.

**Hartford.** Good strong citizen advisory board that was charging along until the last two months. They had a Safer Communities planning grant and had brought in good key stakeholders, etc., and made a good pitch to their selectboard and received the green light. Smaller sub committee is working on space issues and has an implementation grant written.

**Windsor.** Citizen interest in a mid-sized restorative effort. Several years ago, we teamed with the state's attorney office to do a Community Prosecution grant and offer restorative solutions to community issues. Community Partnership down there wants to collaborate with us on restorative justice panels.

**Springfield.** Recently established steering committee to seek Safer Communities planning grant for justice center. Also, at same time there is a strong pitch in the town for an offender reentry process, partly driven by recent release to Springfield of Danny Emerson, an untreated sex offender. They would like to seek both planning grants for a center as well as a reentry component. They have an established a pre-charge program through AHS. Also do reparative probation. SSCF staff also are working with towns folk and service providers on developing better communications about offender reentry.

**Bellows Falls.** Strong active steering committee that has completed a Safer Communities planning grant and is now on verge of seeking implementation grant for mid-sized justice program. Will take over administration of existing reparative panel. Plan to do pre-charge as well. Leaving door open to offender reentry down the road.

**Brattleboro.** Established justice center with co-directors and a school/juvenile outreach person funded through the youth pre-charge grant from AHS. Does reparative panels, community forums, pre-charge and mediation. has established an offender reentry planning group to seek initial planning grant soon.

These communities are engaged in thoughtful, deliberate discussions about the roles they want to play in making their towns and cities better places in which to live, and how they can each cooperate with State Government, the Agency of Human Services, and the Department of Corrections in providing Safer Communities for all of their citizens.

This is an exciting time for the Department, to be engaged in collaboration with the citizens of the State of Vermont. I firmly believe that the ultimate solution to the problem of overcrowding in our facilities is in the hands of the citizens, and that by engaging them in helping to solve their problems with crime, we will be helping solve our problem with overcrowding.

