

Vermont

Department of Corrections (<https://doc.vermont.gov/>)

Directive 430.12, effective June 25, 2017 (t.ly/DFTX), deals with electronic monitoring. It states that home Detention is a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Vermont Department of Corrections (DOC), as defined by statute. This form of supervision is designed for detainees who have traditionally remained incarcerated for lack of bail. This status provides the DOC and the Court an alternative way to address this population in the least restrictive environment, while considering public safety.

Parole and Probation

28 V.S.A. § 202. Powers and responsibilities of the commissioner regarding probation

The commissioner shall be charged with the following powers and responsibilities regarding the administration of probation:

(1) To maintain general supervision of persons placed on probation, and to prescribe rules, consistent with any orders of the court, governing the conduct of such persons;

(2) To supervise the administration of probation services and establish policies and standards and make rules regarding probation investigation, supervision, case work and case loads, record keeping, and the qualification of probation officers;

(3) To use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on probation. Transdermal alcohol monitoring equipment shall be used for such purposes as discouraging persons whose licenses have been suspended for DUI from operating motor vehicles on Vermont highways.

1971, *Adj. Sess., No. 199, § 20*; 2007, *Adj. Sess., No. 179, § 3, eff. July 1, 2008*.

28 V.S.A. § 403. Powers and responsibilities of the commissioner regarding parole

The commissioner is charged with the following powers and responsibilities regarding the administration of parole:

(1) To supervise and control persons placed on parole, subject to the rules and orders of the parole board as to the conditions of parole. The commissioner may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on parole. Transdermal alcohol monitoring equipment shall be used for such purposes as discouraging persons whose licenses have been suspended for DUI from operating motor vehicles on Vermont highways.

1971, *Adj. Sess., No. 199, § 20*; 1997, *Adj. Sess., No. 148, § 56*; 2007, *Adj. Sess., No. 179, § 7, eff. July 1, 2008*.

28 V.S.A. § 502b. Terms and conditions of parole

(a) When an inmate is paroled, the Parole Board shall establish terms and conditions of parole that it deems reasonably necessary to ensure that the inmate will lead a law-abiding life and that will assist the inmate to do so. Such terms and conditions shall be set forth in the parolee's parole agreement. Terms and conditions of parole shall be designed to protect the victim, potential victims, and the public, and to reduce the risk of reoffense. Such conditions may include prohibiting the use of alcohol; prohibiting having contact with minors; prohibiting or limiting the use of a computer or other electronic devices; permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements; and if a probation officer has reasonable grounds to believe the offender has violated a parole condition, permitting a probation officer to monitor or examine the offender's activities, communications, and use of any computer or

other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

(b) The Parole Board may require a parolee as a condition of parole to participate, as a resident or nonresident, in programs at a treatment center for all or part of the period of parole, provided that the Commissioner certifies that adequate treatment facilities, personnel, and programs are available. If the Commissioner determines that the person's residence in the center or participation in its programs, or both, should be terminated because the person can derive no further significant benefits from such residence or participation, or both, or because his or her residence or participation adversely affects the rehabilitation of other residents or participants, he or she shall so notify the Board of parole, which shall thereupon make such other provision with respect to the person as it deems appropriate.

(c) A person residing in and participating in programs at a treatment center shall abide by the rules and regulations of the center and may be required to pay such costs incident to residents as the Commissioner deems appropriate.

1997, *Adj. Sess., No. 148, § 61*; 2009, *No. 1, § 47, eff. July 1, 2009*.

28 V.S.A. § 252. Conditions of probation

(a) The conditions of probation shall be such as the Court in its discretion deems reasonably necessary to ensure that the offender will lead a law-abiding life or to assist the offender to do so. The Court shall provide as an explicit condition of every sentence to probation that if the offender is convicted of another offense during the period for which the sentence remains subject to revocation, then the Court may impose revocation of the offender's probation.

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(17) If the probation officer has reasonable grounds to believe the offender has violated a probation condition, permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic media, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

1971, *Adj. Sess.*, No. 199, § 20; 1983, *Adj. Sess.*, No. 229, § 5; 1993, *Adj. Sess.*, No. 169, § 3; 1995, *Adj. Sess.*, No. 170, § 20; 1999, *Adj. Sess.*, No. 148, § 66; 2001, *Adj. Sess.*, No. 134, § 5; 2007, *Adj. Sess.*, No. 179, § 5, *eff. July 1, 2008*; 2009, No. 1, § 39, *eff. July 1, 2009*.

Community Corrections

28 V.S.A. § 808. Furloughs granted to offenders

(b) An offender 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 the offender's furlough. The Department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

1971, *Adj. Sess.*, No. 199, § 20; 1973, No. 48, § 6; 1973, No. 109, § 12; 1973, *Adj. Sess.*, No. 205, § 4; 1997, *Adj. Sess.*, No. 152, § 9; 1999, No. 29, § 55; 2001, No. 61, § 88; 2001, *Adj. Sess.*, No. 149, § 41; 2005, No. 63, § 6; 2007, *Adj. Sess.*, No. 179, §§ 9, 10, *eff. July 1, 2008*; 2009, *Adj. Sess.*, No. 146, § D7, *eff. July 1, 2010*; 2009, *Adj. Sess.*, No. 157, §§ 7, 8, *eff. July 1, 2010*; 2011, No. 41, § 3, *eff. July 1, 2011*; 2013, *Adj. Sess.*, No. 96, § 189, *eff. July 1, 2014*; 2015, No. 43, § 3, *eff. June 1, 2015*; 2017, *Adj. Sess.*, No. 91, § 2, *eff. July 1, 2018*; 2019, *Adj. Sess.*, No. 148, § 8, *eff. Jan. 1, 2021*.

28 V.S.A. § 808b. Home confinement furlough

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the Court, the Department, or both.

2011, No. 41, § 3a, *eff. July 1, 2011*; 2011, No. 41, § 3c, *eff. April 1, 2013*; 2015, *Adj. Sess.*, No. 125, § 3, *eff. July 1, 2016*.

28 V.S.A. § 351. Definitions

As used in this chapter:

(1) "Supervised community sentence" means a form of imprisonment to be served outside the walls of a correctional facility, subject to the rules of the commissioner and subject to revocation and incarceration pursuant to this chapter.

(2) "Alternative sentencing program" means a residential or nonresidential program operated by the department or contracted with public or private agencies to provide any of a range of sanctions, treatment or control functions, to include without limitation: half-way houses, day centers, community work programs, residential treatment centers, individual and group counseling, house arrest, electronic monitoring and intensive supervision.

1989, *Adj. Sess.*, No. 291, § 4.

28 V.S.A. § 808c. Reintegration furlough

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the Commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. Except as provided in subdivision (2) of this subsection, an offender sentenced to a minimum term of fewer than 365 days shall not be eligible for furlough under this subdivision until the offender has served at least

one-half of his or her minimum term of incarceration.

(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the Department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the Commissioner's discretion and in accordance with rules adopted pursuant to subsection (e) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the Commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

2011, No. 41, § 3a, *eff. July 1, 2011*; 2011, No. 41, § 3c, *eff. April 1, 2013*.

Pretrial Release

13 V.S.A. § 7554b. Home Detention Program

(a) Definition. As used in this section, "home detention" means a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections. The court may authorize scheduled absences such as for work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections. A defendant who is on

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home detention shall remain in the custody of the Commissioner of Corrections with conditions set by the court.

(b) Procedure. At the request of the court, the Department of Corrections, or the defendant, the status of a defendant who is detained pretrial in a correctional facility for inability to pay bail after bail has been set by the court may be reviewed by the court to determine whether the defendant is appropriate for home detention. The review shall be scheduled upon the court's receipt of a report from the Department determining that the proposed residence is suitable for the use of electronic monitoring. A defendant held without bail pursuant to section 7553 or 7553a of this title shall not be eligible for release to the Home Detention Program on or after June 1, 2018. At arraignment or after a hearing, the court may order that the defendant be released to the Home Detention Program, provided that the court finds placing the defendant on home detention will reasonably assure his or her appearance in court when required and the proposed residence is appropriate for home detention. In making such a determination, the court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

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

(c) Failure to comply. The Department of Corrections may revoke a defendant's home detention status for an unauthorized absence or failure to comply with any other condition of the Program and shall return the defendant to a correctional facility.

(d) Credit for time served. A defendant shall receive credit for a sentence of imprisonment for time served in the Home Detention Program.

2009, *Adj. Sess.*, No. 146, § D4, *eff. July 1, 2010*; 2017, No. 62, § 11, *eff. July 1, 2017*; 2017, *Adj. Sess.*, No. 164, § 7, *eff. July 1, 2018*.

DUI

23 V.S.A. § 1213. Ignition interlock restricted driver's license; penalties

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an Alcohol and Driving Education Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title. A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in

an Alcohol and Driving Rehabilitation Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title. A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an Alcohol and Driving Rehabilitation Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title. A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this

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title, upon receipt of proof of installation of an approved ignition interlock device, the court may order that the fine of an indigent person conditionally be reduced by one-half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section.

(e) The holder of an ignition interlock RDL shall pay the costs of installing, purchasing or leasing, and removing the ignition interlock device as well as calibrating the device and retrieving data from it periodically as may be specified by the Commissioner.

(f)(1) Prior to the issuance of an ignition interlock RDL under this section, the Commissioner shall notify the applicant of the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title, and that the reinstatement period may be extended under this subsection (f) or subsections (g)-(h) of this section.

(2)(A) Prior to any such extension of the reinstatement period, the RDL holder shall be given notice and opportunity for a hearing. Service of the notice shall be sent by first class mail to the last known address of the person. The notice shall include a factual description of the grounds for an extension, a reference to the particular law allegedly violated, and a warning that the right to a hearing will be deemed waived, and an extension of the reinstatement period will be imposed, if a written request for a hearing is not received at the Department of Motor Vehicles within 15 days after the date of the notice.

(B) When a holder receives a notice under subdivision (2)(A) of this subsection (f), the holder shall be deemed to have waived the right to a hearing unless a written request for a hearing is received at the Department of Motor Vehicles within 15 days after the date of the notice. If a hearing is not timely requested, the reinstatement period shall be extended in accordance with law.

(C) The provisions of sections 105-107 of this title shall apply to hearings conducted under this subdivision (2).

(3)(A) A holder of an ignition interlock RDL who, prior to eligibility for reinstatement under section 1209a or 1216 of this title, is prevented from starting a motor vehicle because the ignition interlock device records a blood alcohol concentration of 0.04 or above, shall be subject to a three-month extension of the applicable reinstatement period in the event of three such recorded events, and to consecutive three-month extensions for every additional three recorded events thereafter. The Commissioner shall disregard a recording of 0.04 or above for the purposes of this subdivision if the Commissioner in his or her discretion finds, based on a pattern of tests or other reliable information, that the recording does not indicate the consumption of intoxicating liquor by the holder. The Commissioner shall notify the holder in writing after every recording of 0.04 or above that indicates the consumption of intoxicating liquor by the holder and, prior to any extension under this subdivision, the holder shall have the opportunity to be heard pursuant to subdivision (2) of this subsection (f).

(B) A holder of an ignition interlock RDL who, prior to eligibility for reinstatement under section 1209a or 1216 of this title, fails a random retest because the ignition interlock device records a blood alcohol concentration of 0.04 or above and below 0.08, shall be subject to consecutive three-month extensions of the applicable reinstatement period for every such recorded event. A holder who fails a random retest because of a recording of 0.08 or above shall be subject to consecutive six-month extensions of the applicable reinstatement period for every such recorded event. The Commissioner shall disregard a recording of 0.04 or above for the purposes of this subdivision if the Commissioner in his or her discretion finds, based on a pattern of tests or other reliable information, that the recording does not indicate the consumption of intoxicating liquor by the holder. The Commissioner shall notify the holder in writing after every recording of 0.04 or above that is indicative of the consumption of intoxicating liquor by the holder and, prior to any extension under this subdivision, the holder shall have the

opportunity to be heard pursuant to subdivision (2) of this subsection (f).

(g) The holder of an ignition interlock RDL shall operate only motor vehicles equipped with an ignition interlock device, shall not attempt or take any action to tamper with or otherwise circumvent an ignition interlock device, and, after failing a random retest, shall pull over and shut off the vehicle's engine as soon as practicable. A person who violates any provision of this section commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)-(i) of this title, and, upon conviction, the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title shall be extended by six months.

(h) A person who violates a rule adopted by the Commissioner pursuant to subsection (l) of this section shall, after notice and an opportunity to be heard is provided pursuant to subdivision (f)(2) of this section, be subject to an extension of the period prior to eligibility for reinstatement under section 1209a or 1216 of this title in accordance with rules adopted by the Commissioner.

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been adjudicated of an offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the Commissioner shall suspend, revoke, or recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled. The Commissioner may impose a reinstatement fee in accordance with section 675 of this title and require, prior to reinstatement, satisfactory proof of installation of an approved ignition interlock device, financial responsibility as provided in section 801 of this title, and enrollment in or completion of an alcohol and driving education or rehabilitation program.

(j) Repealed by 2011, Adj. Sess., No. 90, § 2, eff. July 1, 2012.

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person

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or otherwise assist another person to circumvent an ignition interlock device. A person adjudicated of a violation of this subsection shall be subject to a civil penalty of up to \$500.00.

(1)(1) The Commissioner, in consultation with any individuals or entities the Commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section.

(2) The rules shall establish uniform performance standards for ignition interlock devices including required levels of

accuracy in measuring blood alcohol concentration, efficacy in distinguishing valid breath samples, the occurrence of random retests while the vehicle is running, and automatic signaling by the vehicle if the operator fails such a retest. The Commissioner shall certify devices that meet these standards, specify any periodic calibration that may be required to ensure accuracy of the devices, and specify the means and frequency of the retrieval and sharing of data collected by ignition interlock devices. Persons who elect to obtain an ignition interlock RDL following a conviction under this subchapter when the person's blood alcohol concentration is

proven to be 0.16 or more shall be required to install an ignition interlock device with a Global Positioning System feature. The rules also shall establish a schedule of extensions of the period prior to eligibility for reinstatement as authorized under subsection (h) of this section.

2009, Adj. Sess., No. 126, § 9, eff. May 27, 2010; 2011, No. 46, § 23, 24, eff. July 1, 2011, and June 30, 2011; 2011, Adj. Sess., No. 90, § 2, eff. July 1, 2012; 2015, Adj. Sess., No. 158, § 47, eff. July 1, 2016; 2015, Adj. Sess., No. 169, § 10, eff. July 1, 2016; 2017, No. 71, § 14, eff. July 1, 2017, and Aug. 7, 2017; 2017, No. 83, § 161, eff. July 1, 2017; 2019, Adj. Sess., No. 131, § 194, eff. July 1, 2020.
