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STATE OF VERMONT  
GENERAL ASSEMBLY

**Nonviolent Misdemeanor Sentencing Review Committee**

January 2012

John Bloomer, Jr., Secretary of the Senate  
Donald G. Milne, Clerk of the House  
Vermont General Assembly  
115 State Street  
Montpelier, VT 05633

Re: Nonviolent Misdemeanor Sentence Review Committee

Gentlemen:

The Vermont General Assembly established the Nonviolent Misdemeanor Review Committee in No. 41 of the Acts of 2011, *An act relating to effective strategies to reduce criminal recidivism*, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The Committee met four times during the fall of 2011, and made substantial headway in a number of areas, but believes a continuation of the Committee's work is warranted.

Court Diversion for Driving Without a License

The Committee began its work by looking at the most common nonviolent misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system. There are a number of reasons a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, automatic suspensions for serious violations such as DUI, failure to pay child support, and procurement of alcohol by a minor. State law provides for a civil offense of driving without a license if the person's license was originally suspended for a reason other than one of five serious

driving offenses.<sup>1</sup> If a person whose license is suspended under the civil suspension law is caught driving without a license for a sixth or subsequent time, the person may be charged with a misdemeanor.<sup>2</sup> If a person's license is suspended for one of the five serious driving offenses and he or she is subsequently caught driving without a license, the person may be charged with a misdemeanor.<sup>3</sup>

There are over 38,000 motor vehicle license suspensions in Vermont. Failure to pay fines is the cause of 60% of license suspensions, followed by accumulation of points at 24%. When it comes to DLS, failure to pay fines is still the primary underlying reason a license was originally suspended,<sup>4</sup> but it is followed more closely by accumulation of points.<sup>5</sup> Looking at a total of 10,246 civil DLS offenses, the Committee discussed ways to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

Court diversion is currently a pre-plea option for many people who have been charged with nonviolent offenses. Diversion is authorized to take civil offenses with the approval of the attorney general, but currently only does so with violations of the statute prohibiting possession of alcohol by minors. Defendants are referred to the diversion project by the prosecuting attorney and the participation by the defendant is voluntary. If the defendant is accepted into the diversion project and successfully completes the terms of the contract the case is dismissed and the records are sealed. If a person refuses to participate or does not complete the program, the case progresses through the court system as usual.

**The Committee recommends that civil DLS cases be referred to court diversion, rather than the judicial bureau, provided that the reason for the license suspension was for failure to pay fees or fines or for accrual of points for motor vehicle violations, excluding DUI or other serious offenses. A diversion participant would be eligible to reinstate his or her operator's license upon compliance with a fine repayment plan and a driver relicensing program, if appropriate. Model legislation is attached.**

#### Examination of Fines and Surcharges

Because nonpayment of fines is the primary reason most operator's licenses are suspended, the Committee believes a comprehensive review of motor vehicle fines and the time allowed for payment is warranted. With some fines in the hundreds of dollars, Committee members feel it is understandable that some people may find the sum insurmountable, and thus not attempt to comply, unwittingly initiating a series of

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<sup>1</sup> 23 V.S.A. § 676.

<sup>2</sup> 23 V.S.A. § 674(a)(2).

<sup>3</sup> 23 V.S.A. § 674(1).

<sup>4</sup> 5,258

<sup>5</sup> 4,430.

compounding events, including surcharges, license suspension, reinstatement fees, and auto insurance rate increases.

**The Committee recommends that the legislative committees of jurisdiction look at not only the civil penalty amounts for the various motor vehicle violations to ensure they are set at a reasonable rate that does not unintentionally bring otherwise law-abiding citizens into the criminal justice system, but also whether the various laws that trigger a license suspension are efficacious and a wise use of resources.**

#### Missouri Recommended Sentencing User's Guide

The Committee is concerned about the varying degrees of justice meted out by the different counties in Vermont. Ours is a system of 14 independently elected state's attorneys and a judicial system that employs rotation, but on a regional basis. The Committee believes that any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense.

To this effort, upon recommendation of Committee member Judge Amy Davenport, the Committee took testimony on a new sentencing tool being used by Missouri judges. Developed by the Missouri Sentencing Advisory Commission, the automated Recommended Sentencing Application is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. The program provides sentencing recommendations based upon the type of offense, the seriousness of the offense, the level of the defendant's prior criminal history, and the average sentence imposed in the state. According to the Commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

**The Committee recommends that the legislative committees of jurisdiction consider legislation to implement a system to provide information on criminal sentencing based on the model developed by the Missouri Sentencing Advisory Commission.**

#### Increasing the Use of Home Detention

The Committee is committed to ensuring that the resources of the criminal justice system are used efficiently without sacrificing public safety or the administration of justice. In furtherance of this goal, the Committee searched for existing programs that can be better utilized to reduce the burden on the Judiciary and the Department of Corrections. The option of pretrial detention emerged as an area of focus.

Pretrial home detention was created by the legislature in 2010 and permits an individual to be detained at a preapproved residence, rather than a correctional facility, under the supervision of the Department of Corrections, pending trial. In the 18 months since

enactment of the law, the use of pretrial detention has been negligible. The Committee believes more should be done to encourage the use of this tool if officials can be assured the person can be properly supervised and is not a danger.

**The Committee recommends that the legislative committees of jurisdiction review the procedures used to identify appropriate candidates for pretrial home detention with the goal of increasing its use.**

#### Continuing a Case Without a Finding

In reviewing the pre- and post-plea options available to divert a defendant from an incarcerative sentence, the Committee began to discuss an option used in states such as Massachusetts called “continuing a case without a finding” (CWOFF).

CWOFF is similar to a combination of a plea of nolo contendere and a deferred sentence. A defendant who agrees to a CWOFF would not be admitting guilt, but is admitting the state has sufficient facts to find the person guilty. The person would be placed on probation for a short, definite period of time. If the person complies with the conditions of the probation, the case is dismissed. If the person violates the terms, the court can modify the probation terms or revoke probation and impose sentence.

**The Committee recommends that the legislative committees of jurisdiction consider whether Vermont should adopt a “case continued without finding” option for disposing of criminal charges.**

#### Extending the Duration of the Committee

The Committee feels it has made an excellent start exploring alternatives to incarceration for nonviolent offenders in the time allotted, but that there is still much more that can be done. **Therefore, the Committee recommends that the legislature extend the duration of this Committee until January 2013.**

On behalf of the Committee,

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Sen. Dick Sears, Chair

1 Introduced by

2 Referred to Committee on

3 Date:

4 Subject: Motor vehicles; operators' licenses; operation after suspension,  
5 revocation, or refusal

6 Statement of purpose: This bill proposes to refer cases of driving with a  
7 suspended license to court diversion, rather than the judicial bureau, provided  
8 that the reason for the license suspension was for failure to pay fees or fines or  
9 for accrual of points for motor vehicle violations, excluding DUI or other  
10 serious offenses. A diversion participant would be eligible to reinstate his or  
11 her operator's license upon compliance with a fine repayment plan and a driver  
12 relicensing program, if appropriate.

13 An act relating to referral to court diversion for driving with a suspended  
14 license

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

16 Sec. 1. 23 V.S.A. § 676 is amended to read:

17 § 676. OPERATION AFTER SUSPENSION, REVOCATION, OR

18 REFUSAL - CIVIL VIOLATION

19 (a) A person whose license or privilege to operate a motor vehicle has been  
20 revoked, suspended or refused by the commissioner of motor vehicles for any

1 reason other than a violation of subsections 1091(b), 1094(b), 1128(b) or (c),  
2 or section 1201 or a suspension under section 1205 of this title and who  
3 operates or attempts to operate a motor vehicle upon a public highway before  
4 the license or privilege of the person to operate a motor vehicle has been  
5 reinstated by the commissioner commits a civil traffic violation.

6 (b)(1) A law enforcement officer shall issue a notice of violation, in a form  
7 approved by the court administrator, to a person who violates this section if the  
8 person has at least one but no more than four prior violations of this section.

9 The notice of violation shall require the person to provide his or her name and  
10 address, and shall explain procedure under this section, including that:

11 (A) The person must contact the diversion program in the county  
12 where the offense occurred within 15 days.

13 (B) Failure to contact the diversion program within 15 days will  
14 result in the case being referred to the judicial bureau, where the person, if  
15 found liable for the violation, will be subject to a monetary penalty and a  
16 possible extension of the suspension of the person's operator's license, and  
17 may face substantially increased insurance rates.

18 (C) The diversion program may assist the person in developing a plan  
19 to regain his or her operator's license.

20 (D) No money shall be submitted to pay any penalty until after  
21 adjudication.

1           (E) The person shall notify the diversion program if the person's  
2           address changes.

3           (2) When a person is issued a notice of violation under subdivision (1)  
4           of this subsection, the law enforcement officer shall complete a summons and  
5           complaint for the offense and send it to the diversion program in the county  
6           where the offense occurred. The summons and complaint shall not be filed  
7           with the judicial bureau at that time.

8           (3) Within 15 days after receiving a notice of violation issued under  
9           subdivision (1) of this subsection, the person shall contact the diversion  
10          program in the county where the offense occurred. If the person fails to do so,  
11          the diversion program shall file the summons and complaint with the judicial  
12          bureau for adjudication under 4 V.S.A. chapter 29. The diversion program  
13          shall provide a copy of the summons and complaint to the law enforcement  
14          officer who issued the notice of violation, and shall provide two copies to the  
15          person charged with the violation.

16          (c)(1) Upon receipt from a law enforcement officer of a summons and  
17          complaint completed under subdivision (b)(2) of this section or upon  
18          application of a person pursuant to subsection (c) of this section, the diversion  
19          program shall send the person a notice to report to the diversion program. The  
20          notice to report shall provide that:

21               (A) The person is required to:

1                   (i) meet with diversion staff to assess the person's risk for future  
2                   civil violations and to identify factors that contributed to previous violations  
3                   leading to license suspension.

4                   (ii) complete all conditions related to the offense and indicated by  
5                   the screening process that are imposed by the diversion program, including  
6                   compliance with a plan to pay fines and fees required to reinstate a driver's  
7                   license.

8                   (B) If the person does not satisfactorily comply with the conditions  
9                   imposed by the diversion program, the case will be referred to the judicial  
10                  bureau, where the person, if found liable for the violation, shall be subject to a  
11                  monetary penalty and a possible extension of the suspension of the person's  
12                  operator's license, and may face substantially increased insurance rates.

13                  (C) If the person satisfactorily complies with the conditions imposed  
14                  by the diversion program, no penalty shall be imposed and the person's  
15                  operator's license shall be reinstated provided:

16                   (i) the initial period of license suspension has run if the suspension  
17                   was for a motor vehicle violation, rather than an indefinite suspension for  
18                   failure to pay a fine; and

19                   (ii) the person is in compliance with any payment plan for fines  
20                   and fees required to reinstate a driver's license.

1           (2) Upon being contacted by a person who has been issued a notice of  
2           violation under subdivision (b)(1) of this section, the diversion program shall  
3           register the person in the driver relicensing program, if appropriate. Pursuant  
4           to the driver relicensing program, the diversion program shall impose  
5           conditions on the person. The conditions imposed shall include only  
6           conditions related to requirements for obtaining a driver's license.

7           (3) When a person has satisfactorily completed conditions related to the  
8           offense which the diversion program has imposed, the diversion program shall:

9                   (A) void the summons and complaint with no penalty due; and

10                   (B) send copies of the voided summons and complaint to the judicial  
11           bureau and to the law enforcement officer who completed them. Before  
12           sending copies of the voided summons and complaint to the judicial bureau  
13           under this subdivision, the diversion program shall redact all language  
14           containing the person's name, address, Social Security number, or any other  
15           information which identifies the person.

16           (4) If a person does not satisfactorily comply with the conditions related  
17           to the offense imposed by the diversion program or if the person fails to pay  
18           the diversion program any required program fees, the diversion program shall  
19           file the summons and complaint with the judicial bureau for adjudication under  
20           4 V.S.A. chapter 29. The diversion program shall provide a copy of the  
21           summons and complaint to the law enforcement officer who issued the notice

1 of violation, and shall provide two copies to the person charged with the  
2 violation.

3 (5) A person aggrieved by a decision of the diversion program may seek  
4 review of that decision pursuant to Rule 75 of the Vermont Rules of Civil  
5 Procedure.

6 (d) A diversion program may contact the judicial bureau to request a  
7 waiver of the reinstatement fee required by section 675 of this title or to reduce  
8 the amount due on the basis of mitigating factors as set forth in section 2307 of  
9 this title.

10 (e) A person with fewer than five violations of subsection (a) of this section  
11 may apply to the diversion relicensing program. Upon receipt of an  
12 application, the diversion program shall send the person a notice to report to  
13 the diversion program. The notice to report shall provide that the person is  
14 required to:

15 (1) meet with diversion staff to assess the person's risk for future civil  
16 violations and to identify factors that contributed to previous violations leading  
17 to license suspension.

18 (2) complete all conditions related to the offense and indicated by the  
19 screening process that are imposed by the diversion program, including  
20 compliance with a plan to pay fines and fees required to reinstate a driver's  
21 license.

1        (f) In establishing a prima facie case against a person accused of violating  
2        this section, the judicial bureau shall accept as evidence, a printout attested to  
3        by the law enforcement officer as the person's motor vehicle record showing  
4        convictions and resulting license suspensions. The admitted motor vehicle  
5        record shall establish a permissive inference that the person was under  
6        suspension or had his or her license revoked on the dates and time periods set  
7        forth in the record. The judicial bureau shall not require a certified copy of the  
8        person's motor vehicle record from the department of motor vehicles to  
9        establish the permissive inference.

10       (g) The state's attorney may dismiss without prejudice a violation brought  
11       under this section.

12       (h) The court diversion project shall adopt standards for determining  
13       whether a person is in compliance with conditions as set forth in this section.  
14       Such standards shall be applicable in all county diversion programs.

15       Sec. 2. 23 V.S.A. § 2307 is amended to read:

16       § 2307. REMEDIES FOR FAILURE TO PAY TRAFFIC VIOLATIONS

17       (a) As used in this section,

18       ~~(a)~~ ~~“Amount~~ “amount due” means all financial assessments contained in  
19       a judicial bureau judgment, including penalties, fines, surcharges, court costs,  
20       and any other assessment authorized by law.

1           (b) Notice of risk of suspension. A judgment for a traffic violation shall  
2 contain a notice that failure to pay or otherwise satisfy the amount due within  
3 30 days of the notice will result in suspension of the person's operator's license  
4 or privilege to operate, and the denial, if the person is the sole registrant, of the  
5 person's application for renewal of a motor vehicle registration, until the  
6 amount due is paid or otherwise satisfied. If the defendant fails to pay the  
7 amount due within 30 days of the notice and the case is not pending on appeal,  
8 the judicial bureau shall provide electronic notice thereof to the commissioner  
9 of motor vehicles who, after 20 days from the date of receiving the electronic  
10 notice, shall suspend the person's operator's license or privilege to operate and  
11 deny, if the person is the sole registrant, the person's application for renewal of  
12 a motor vehicle registration until the amount due is paid or otherwise satisfied.

13           (c) During proceedings conducted pursuant to 4 V.S.A. § 1109, the  
14 hearing officer may apply the following mitigation remedies when the  
15 judgment is based upon a traffic violation:

16           (1) The hearing officer may waive the reinstatement fee required by  
17 section 675 of this title or reduce the amount due on the basis of:

18           (A) the defendant's driving history, ability to pay, or service to the  
19 community;

20           (B) the collateral consequences of the violation; or

21           (C) the interests of justice.

1           (2) The hearing officer may specify a date by which the defendant  
2 shall pay the amount due and may notify the commissioner of motor vehicles  
3 to reinstate the defendant's operator's license or privilege subject to payment  
4 of the amount due by the specified date or compliance with a payment plan to  
5 discharge the debt. If the defendant fails to pay the amount due by the  
6 specified date or to comply with an agreed-upon payment plan, the judicial  
7 bureau may notify the commissioner to suspend the defendant's operator's  
8 license or privilege. A license may be reinstated under this subdivision only if  
9 the defendant's license is suspended solely for failure to pay a judicial bureau  
10 judgment.

11           (3) The judicial officer shall have sole discretion to determine  
12 mitigation remedies pursuant to this subdivision, and the judicial officer's  
13 determination shall not be subject to review or appeal in any court, tribunal, or  
14 administrative office.

15 Sec. 3. EFFECTIVE DATE

16           This act shall take effect on July 1, 2012.

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