

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred  
3 Senate Bill No. 338 entitled “An act relating to justice reinvestment”  
4 respectfully reports that it has considered the same and recommends that the  
5 House propose to the Senate that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Findings and Purpose \* \* \*

8 Sec. 1. FINDINGS AND PURPOSE

9 (a) The General Assembly finds:

10 (1) Almost 80 percent of sentenced Department of Corrections  
11 admissions are for people returned or revoked from furlough, parole, and  
12 probation, primarily driven by furlough violators.

13 (2) Nearly one-half of Vermont’s sentenced prison population at the end  
14 of FY 2019 consisted of people who were returned from community  
15 supervision, primarily furlough.

16 (3) Nearly 80 percent of furlough returns to incarceration are due to  
17 technical violations rather than new crime offenses.

18 (4) A decrease of 106–135 people would represent an 8–10 percent drop  
19 in the sentenced incarceration population and could mean a 40–50 percent  
20 reduction in the out-of-state contract population.

1           (5) Revocations and returns from supervision are driving a large share of  
2           prison admissions, and limited funding leaves large numbers of high-risk  
3           people without the programs and services they need to succeed in the  
4           community.

5           (6) Over the past three years, the average annual proportion of  
6           admissions to sentenced incarceration that were persons returning or being  
7           revoked from furlough, parole, and probation was 78 percent.

8           (7) Vermont incarcerates more persons than current facilities can  
9           accommodate, and the incarceration population is growing.

10          (b) The purpose of this act is to:

11           (1) Improve public safety in Vermont, while creating immediate  
12           opportunities to reduce recidivism and achieve long-term savings by reducing  
13           contract bed needs significantly.

14           (2) Make evidence-based programming available to individuals  
15           transitioning back into the community in order to support their transition and  
16           reduce violations, revocations, and reincarceration.

17           (3) Streamline the furlough system to eliminate multiple furlough  
18           statuses without limiting the availability of supervision within the community  
19           for inmates.

\* \* \* Parole \* \* \*

Sec. 2. 28 V.S.A. § 402 is amended to read:

§ 402. DEFINITIONS

~~Whenever~~ As used in this chapter:

(1) “Parole” means the release of an inmate to the community by the Parole Board before the end of the inmate’s sentence subject to conditions imposed by the Board and subject to the supervision and control of the Commissioner. If a court or other authority files a warrant or detainer against an inmate, the Board may release him or her on parole to answer the warrant and serve any subsequent sentences.

(2) “Interview” means an appearance by the inmate at a meeting of the Parole Board.

(3) “Review” means an evaluation of an inmate’s records without an appearance by the inmate before the Parole Board.

Sec. 3. 28 V.S.A. § 501 is amended to read:

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION

An inmate who is serving a sentence of imprisonment who is not eligible for presumptive parole pursuant to section 501a of this title shall be eligible for parole consideration as follows:

1           (1) If the inmate’s sentence has no minimum term or a zero minimum  
2 term, the inmate shall be eligible for parole consideration within 12 months  
3 after commitment to a correctional facility.

4           (2) If the inmate’s sentence has a minimum term, the inmate shall be  
5 eligible for parole consideration after the inmate has served the minimum term  
6 of the sentence.

7 Sec. 4. 28 V.S.A. § 501a is added to read:

8 § 501a. PRESUMPTIVE PAROLE

9           An inmate who is serving a sentence of imprisonment shall be eligible for  
10 presumptive release in accordance with subsection 502a(e) of this title at the  
11 expiration of the inmate’s minimum or aggregate minimum term of  
12 imprisonment if the inmate:

13           (1) has acquired no new criminal conviction while incarcerated or on  
14 supervision for the current offense;

15           (2) has no outstanding warrants, detainers, commitments, or pending  
16 charges;

17           (3) is compliant with the required services and programming portion of  
18 the inmate’s case plan during the period of incarceration if the inmate is  
19 incarcerated for less than 90 days or is compliant for the 90 days preceding the  
20 completion of the inmate’s minimum term if the inmate is incarcerated for 90  
21 days or more;

1           (4) is compliant with the conditions of supervision if the offender is  
2           supervised in the community on furlough during:

3                   (A) the entire period of supervision if the term of supervision is less  
4           than 90 days; or

5                   (B) the 90 days prior to the consideration of parole eligibility if the  
6           term of supervision is 90 days or more;

7           (5) has no major disciplinary rule violation or pending infractions during  
8           the period of incarceration if the inmate is incarcerated for less than 12 months  
9           or has no major disciplinary rule violations or pending infractions during the  
10          preceding 12 months if the inmate is incarcerated for 12 months or more;

11           (6) has not had parole revoked on the inmate’s current sentence; and

12           (7) is not serving a sentence for committing a crime specified in  
13          13 V.S.A. § 5301.

14          Sec. 5. 28 V.S.A. § 501a is amended to read:

15          § 501a. PRESUMPTIVE PAROLE

16           An inmate who is serving a sentence of imprisonment shall be eligible for  
17          presumptive release in accordance with subsection 502a(e) of this title at the  
18          expiration of the inmate’s minimum or aggregate minimum term of  
19          imprisonment if the inmate:

20                   (1) has acquired no new criminal conviction while incarcerated or on  
21          supervision for the current offense;

1           (2) has no outstanding warrants, detainers, commitments, or pending  
2 charges;

3           (3) is compliant with the required services and programming portion of  
4 the inmate’s case plan during the period of incarceration if the inmate is  
5 incarcerated for less than 90 days or is compliant for the 90 days preceding the  
6 completion of the inmate’s minimum term if the inmate is incarcerated for 90  
7 days or more;

8           (4) is compliant with the conditions of the offender’s supervision if the  
9 offender is supervised in the community on furlough during:

10           (A) the entire period of supervision if the term of supervision is less  
11 than 90 days; or

12           (B) the 90 days prior to the consideration of parole eligibility if the  
13 term of supervision is 90 days or more;

14           (5) has no major disciplinary rule violation or pending infractions during  
15 the period of incarceration if the inmate is incarcerated for less than 12 months,  
16 or has no major disciplinary rule violations or pending infractions during the  
17 preceding 12 months if the inmate is incarcerated for 12 months or more;

18           (6) has not had parole revoked on the inmate’s current sentence; and

19           (7) is not serving a sentence for committing a crime specified in

20 ~~13 V.S.A. § 5301~~ 33 V.S.A. § 5204(a).

1 Sec. 6. 28 V.S.A. § 502 is amended to read:

2 § 502. PAROLE INTERVIEWS AND REVIEWS

3 (a) The Board shall interview each inmate eligible for parole consideration  
4 under section 501 of this title before ordering the inmate released on parole.  
5 The Board shall consider all pertinent information regarding an inmate in order  
6 to determine the inmate's eligibility for parole. The Board may grant parole  
7 only after an inmate is interviewed in accordance with this section. The Parole  
8 Board may conduct the interview in person, by telephone or videoconference,  
9 or by any other method it deems appropriate.

10 (b) An initial interview of the inmate shall occur at least 30 days prior to  
11 the date when the inmate becomes eligible for parole consideration under  
12 section 501 of this title.

13 (c) An inmate eligible for parole consideration shall, subsequent to the  
14 initial interview provided for above, be reviewed and interviewed thereafter, as  
15 follows:

16 (1) ~~If the inmate is serving a maximum sentence of less than 15 years:~~

17 (A) the Board shall review the inmate's record once every 12  
18 months;

19 (B)(2) the Board shall conduct an interview of the inmate at the  
20 request of the Department; and

1           ~~(C)~~(3) upon written request of the inmate, the Board shall conduct an  
2 interview, ~~but not more than once in any two-year period~~ annually.

3           ~~(2) If the inmate is serving a sentence with a maximum of 15 years up to~~  
4 ~~a maximum of life:~~

5           ~~(A) the Board shall review the inmate's record once every two years;~~

6           ~~(B) the Board shall conduct an interview of the inmate at the request~~  
7 ~~of the Department; and~~

8           ~~(C) upon written request of the inmate, the Board may conduct an~~  
9 ~~interview, but not more than once in any two-year period.~~

10           (d) The Board in its discretion may hear from attorneys or other persons  
11 with an interest in the case before the Board. A person presenting statements  
12 to the Board may be required to submit the statement in writing.

13           (e) Interviews and reviews shall be conducted in accordance with the rules  
14 and regulations established by the Board, which shall be consistent with this  
15 section.

16           (f) The Board ~~may~~<sub>2</sub> when formulating the conditions of a parole, shall take  
17 into consideration the emotional needs of the victim of an offender's crime  
18 plus the needs of the victim's family.



1 Sec. 7. 28 V.S.A. § 502a is amended to read:

2 § 502a. RELEASE ON PAROLE

3 (a) ~~No~~ Except as otherwise provided in subsection (d) of this section and  
4 section 501 of this title, no inmate serving a sentence with a minimum term  
5 shall be released on parole until the inmate has served the minimum term of  
6 the sentence, less any reductions for good behavior.

7 (b) An inmate who is not eligible for presumptive parole pursuant to  
8 section 501a of this title shall be released on parole by the written order of the  
9 Parole Board if the Board determines:

10 (1) the inmate is eligible for parole;

11 (2) there is a reasonable probability that the inmate can be released  
12 without detriment to the community or to the inmate; and

13 (3) the inmate is willing and capable of fulfilling the obligations of a  
14 law-abiding citizen.

15 (c) A parole under subsection (b) or (e) of this section shall be ordered only  
16 for the best interests of the community and of the inmate, and shall not be  
17 regarded as an award of clemency, a reduction of sentence, or a conditional  
18 pardon.

19 (d) Notwithstanding subsection (a) or (e) of this section, or any other  
20 provision of law to the contrary, any inmate who is serving a sentence,  
21 including an inmate who has not yet served the minimum term of the sentence,

1 who is diagnosed as having a terminal or serious medical condition so as to  
2 render the inmate unlikely to be physically capable of presenting a danger to  
3 society, may be released on medical parole to a hospital, hospice, other  
4 licensed inpatient facility, or suitable housing accommodation as specified by  
5 the Parole Board. Provided the inmate has authorized the release of his or her  
6 personal health information, the Department shall promptly notify the Parole  
7 Board upon receipt of medical information of an inmate’s diagnosis of a  
8 terminal or serious medical condition. As used in this subsection, a “serious  
9 medical condition” does not mean a condition caused by noncompliance with a  
10 medical treatment plan.

11 (e)(1) The Department shall identify each inmate meeting the presumptive  
12 parole eligibility criteria in section 501a of this title and refer each eligible  
13 inmate who does not meet the risk criteria set forth in subdivision (2) of this  
14 subsection to the Parole Board for an administrative review at least 60 days  
15 prior to the inmate’s eligibility date.

16 (2) The Department shall screen each inmate it identifies as eligible for  
17 presumptive parole for the risk criteria set forth in this subdivision. If the  
18 Department determines that, based on clear and convincing evidence, there is a  
19 reasonable probability that the inmate’s release would result in a detriment to  
20 the community, or that the inmate is not willing and capable of fulfilling the  
21 obligations of parole, the Department shall, at least 60 days prior to the

1 inmate's eligibility date, refer the inmate to the Parole Board for a parole  
2 hearing.

3 (3)(A) Within 30 days of the inmate's eligibility date, the Parole Board  
4 shall conduct an administrative review of each inmate the Department  
5 identifies as eligible for presumptive release who does not meet the risk criteria  
6 set forth in subdivision (2) of this subsection. The Board may deny  
7 presumptive release and set a hearing if it determines, through its  
8 administrative review, that a victim or victims should have the opportunity to  
9 participate in a parole hearing. If the Board determines there is a victim or  
10 victims who should be notified, the Department shall notify the victim or  
11 victims, and the Board shall provide them with the opportunity to participate in  
12 a parole hearing.

13 (B) The Parole Board shall conduct a parole hearing pursuant to  
14 section 502 of this title for each eligible inmate that the Department determines  
15 meets the risk criteria in subdivision (2) of this subsection.

16 \* \* \* Furlough \* \* \*

17 Sec. 8. 28 V.S.A. § 808 is amended to read:

18 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

19 (a) The Department may extend the limits of the place of confinement of an  
20 offender at any correctional facility if the offender agrees to comply with such  
21 conditions of supervision the Department, in its sole discretion, deems

1 appropriate for that offender's furlough. The Department may authorize a  
2 temporary furlough for a defined period for any of the following reasons:

3 (1) ~~To~~ to visit a critically ill relative;

4 (2) ~~To~~ to attend the funeral of a relative;

5 (3) ~~To~~ to obtain medical services;

6 (4) ~~To~~ to contact prospective employers;

7 (5) ~~To~~ to secure a suitable residence for use upon discharge.

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

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

1 (c) The extension of the limits of the place of confinement authorized by  
2 this section shall in no way be interpreted as a probation or parole of the  
3 offender, but shall constitute solely a permitted extension of the limits of the  
4 place of confinement for offenders committed to the custody of the  
5 Commissioner.

6 (d) When any enforcement officer, as defined in 23 V.S.A. § 4~~;~~<sup>2</sup> employee  
7 of the Department~~;~~<sup>2</sup> or correctional officer responsible for supervising an  
8 offender believes the offender is in violation of any verbal or written condition  
9 of the temporary furlough, the officer or employee may immediately lodge the  
10 offender at a correctional facility or orally or in writing deputize any law  
11 enforcement officer or agency to arrest and lodge the offender at such a  
12 facility. The officer or employee shall subsequently document the reason for  
13 taking such action.

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

1 deemed suitable by the Commissioner. As used in this subsection, a “serious  
2 medical condition” does not mean a condition caused by noncompliance with a  
3 medical treatment plan.

4 ~~(f) While appropriate community housing is an important consideration in  
5 release of offenders, the Department shall not use lack of housing as the sole  
6 factor in denying furlough to offenders who have served at least their  
7 minimum sentence for a nonviolent misdemeanor or nonviolent felony  
8 provided that public safety and the best interests of the offender will be served  
9 by reentering the community on furlough. The Department shall adopt rules to  
10 implement this subsection. [Repealed.]~~

11 (g) ~~Subsections (b)–(f)~~ Subsection (b) of this section shall also apply to  
12 sections 808a and 808c of this title.

13 Sec. 9. 28 V.S.A. § 808a is amended to read:

14 § 808a. TREATMENT FURLOUGH

15 (a) An offender may be sentenced to serve a term of imprisonment, but  
16 placed by a court on treatment furlough to participate in such programs  
17 administered by the Department in the community that reduce the offender’s  
18 risk to reoffend or that provide reparation to the community in the form of  
19 supervised work activities.

20 (b) Provided the approval of the sentencing judge, if available, otherwise a  
21 Superior Court judge, is first obtained, the Department may place on treatment

1 furlough an offender who has not yet served the minimum term of the  
2 sentence, who, in the Department’s determination, needs residential treatment  
3 services not available in a correctional facility. The services may include  
4 treatment for substance abuse or personal violence or any other condition that  
5 the Department has determined should be addressed in order to reduce the  
6 offender’s risk to reoffend or cause harm to himself or herself or to others in  
7 the facility. The offender shall be released only to a hospital or residential  
8 treatment facility that provides services to the general population. The State’s  
9 share of the cost of placement in such a facility, net of any private or federal  
10 participation, shall be paid pursuant to memoranda of agreement between and  
11 within State agencies reflective of their shared responsibilities to maximize the  
12 efficient and effective use of State resources. In the event that a memorandum  
13 of agreement cannot be reached, the Secretary of Administration shall make a  
14 final determination as to the manner in which costs will be allocated.

15 ~~(c)(1) Except as provided in subdivision (2) of this subsection, the~~  
16 ~~Department, in its own discretion, may place on treatment furlough an offender~~  
17 ~~who has not yet served the minimum term of his or her sentence for an eligible~~  
18 ~~misdemeanor as defined in section 808d of this title if the Department has~~  
19 ~~made a determination based upon a risk assessment that the offender poses a~~  
20 ~~low risk to public safety or victim safety and that employing an alternative to~~

1 ~~incarceration to hold the offender accountable is likely to reduce the risk of~~  
2 ~~recidivism.~~

3 ~~(2) Driving under the influence of alcohol or drugs, second offense, as~~  
4 ~~defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of~~  
5 ~~alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be~~  
6 ~~considered eligible misdemeanors for the sole purpose of subdivision (1) of~~  
7 ~~this subsection. [Repealed.]~~

8 Sec. 10. 28 V.S.A. § 723 is amended to read:

9 § 723. ~~CONDITIONAL REENTRY~~ COMMUNITY SUPERVISION

10 FURLOUGH

11 (a) ~~When a sentenced offender has served the minimum term of the total~~  
12 ~~effective sentence, the~~ The Department may release ~~the offender~~ from a  
13 correctional facility ~~under section 808 of this title for the offender to~~  
14 participate in a reentry program while serving the remaining sentence in the  
15 community a person who:

16 (1) has served the minimum term of the person's total effective  
17 sentence;

18 (2) is ineligible for or refuses presumptive parole pursuant to section  
19 501a of this title or has been returned or revoked to prison for a violation of  
20 conditions of parole, furlough, or probation; and



1           (3) agrees to comply with such conditions of supervision the  
2           Department, in its sole discretion, deems appropriate for that person's  
3           furlough.

4           (b) The offender's continued supervision in the community is conditioned  
5           on the offender's commitment to and satisfactory progress in his or her reentry  
6           program and on the offender's compliance with any terms and conditions  
7           identified by the Department.

8           (c) Prior to release under this section, the Department shall screen and, if  
9           appropriate, assess each felony drug and property offender for substance abuse  
10          treatment needs using an assessment tool designed to assess the suitability of a  
11          broad range of treatment services, and it shall use the results of this assessment  
12          in preparing a reentry plan. The Department shall attempt to identify all  
13          necessary services in the reentry plan and work with the offender to make  
14          connections to necessary services prior to release so that the offender can begin  
15          receiving services immediately upon release.

16          Sec. 11. 28 V.S.A. § 724 is amended to read:

17          § 724. TERMS AND CONDITIONS OF ~~CONDITIONAL REENTRY~~

18                   COMMUNITY SUPERVISION FURLOUGH

19          The Department shall identify in the terms and conditions of ~~conditional~~  
20          ~~reentry~~ community supervision furlough those programs necessary to reduce  
21          the offender's risk of reoffense and to promote the offender's accountability

1 for progress in the reintegration process. The Department shall make all  
2 determinations of violations of conditions of community supervision furlough  
3 pursuant to this subchapter and any resulting change in status or termination of  
4 community supervision furlough status.

5 Sec. 12. 28 V.S.A. § 724 is amended to read:

6 § 724. TERMS AND CONDITIONS OF COMMUNITY SUPERVISION

7 FURLOUGH

8 (a) Authority of the Department. The Department shall identify in the  
9 terms and conditions of community supervision furlough those programs  
10 necessary to reduce the offender's risk of reoffense and to promote the  
11 offender's accountability for progress in the reintegration process. The  
12 Department shall make all determinations of violations of conditions of  
13 community supervision furlough pursuant to this subchapter and any resulting  
14 change in status or termination of community supervision furlough status.

15 (b) 30-day interrupt or revocation. Any interruption of an offender's  
16 community supervision furlough after the Department has found a technical  
17 violation of furlough conditions shall trigger a Department Central Office case  
18 staffing review and Department notification to the Office of the Defender  
19 General if duration of the interruption will be thirty days or longer.

20 (c) Appeal. An offender whose furlough status is revoked or interrupted  
21 for 30 days or longer shall have the right to appeal the Department's

1 determination to the Civil Division of the Superior Court in accordance with  
2 Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based  
3 on a de novo review of the record. The appellant may offer testimony, and, in  
4 its discretion for good cause shown, the court may accept additional evidence  
5 to supplement the record. The appellant shall have the burden of proving by a  
6 preponderance of the evidence that the Department abused its discretion in  
7 imposing a furlough revocation or interrupt for 30 days or longer pursuant to  
8 subsection (d) of this section.

9 (d) Technical violations.

10 (1) As used in this section, “technical violation” means a violation of  
11 conditions of furlough that does not constitute a new crime.

12 (2) It shall be abuse of the Department’s discretion to revoke furlough or  
13 interrupt furlough status for 30 days or longer for a technical violation, unless:

14 (A) the offender’s risk to reoffend can no longer be adequately  
15 controlled in the community, and no other method to control noncompliance is  
16 suitable; or

17 (B) the violation or pattern of violations indicates the offender poses  
18 a danger to others or to the community or poses a threat to abscond or escape  
19 from furlough.

1 Sec. 13. 28 V.S.A. § 725 is amended to read:

2 § 725. PAROLE HEARING FOR OFFENDERS ON ~~CONDITIONAL~~  
3 ~~REENTRY~~ COMMUNITY SUPERVISION FURLOUGH

4 (a) The Department shall submit to the Parole Board a recommendation  
5 relative to whether the offender should be released to parole pursuant to  
6 section ~~502a~~ 501 of this title when:

7 (1) an offender sentenced solely for the commission of one or more  
8 unlisted crimes has, in the sole discretion of the Department, successfully  
9 completed 90 days of community supervision ~~in a conditional reentry program~~  
10 furlough; or

11 (2) an offender sentenced for the commission of at least one or more  
12 listed crimes has, in the sole discretion of the Department, successfully  
13 completed 180 days of community supervision ~~in a conditional reentry~~  
14 ~~program~~ furlough.

15 Sec. 14. 28 V.S.A. § 818 is amended to read:

16 § 818. EARNED GOOD TIME; REDUCTION OF TERM

17 (a) On or before ~~July 1, 2020~~ September 1, 2020, the Department of  
18 Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25  
19 implementing an earned good time program to become effective on January 1,  
20 2021. The Commissioner shall adopt rules to carry out the provisions of this  
21 section as an emergency rule and concurrently propose them as a permanent

1 rule. The emergency rule shall be deemed to meet the standard for the  
2 adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

3 (b) The earned good time program implemented pursuant to this section  
4 shall comply with the following standards:

5 (1) The program shall be available for all sentenced offenders, including  
6 furloughed offenders, provided that the program shall not be available to  
7 offenders on probation or parole, to offenders eligible for a reduction of term  
8 pursuant to section 811 of this title, or to offenders sentenced to life without  
9 parole. Offenders currently serving a sentence shall be eligible to begin  
10 earning a reduction in term when the earned good time program becomes  
11 effective.

12 (2) Offenders shall earn a reduction of ~~five~~ seven days in the minimum  
13 and maximum sentence for each month during which the offender:

14 (A) is not adjudicated of a major disciplinary rule violation; and

15 (B) is not reincarcerated from the community for a violation of  
16 release conditions, provided that an offender who loses a residence for a reason  
17 other than fault on the part of the offender shall not be deemed reincarcerated  
18 under this subdivision; ~~and,~~

19 ~~(C) complies with a merit based system designed to incentivize~~  
20 ~~offenders to meet milestones identified by the Department that prepare~~

1 ~~offenders for reentry, if the offender has received a sentence of greater than~~  
2 ~~one year.~~

3 (3) An offender who receives post-adjudication treatment in a residential  
4 setting for a substance use disorder shall earn a reduction of one day in the  
5 minimum and maximum sentence for each day that the offender receives the  
6 inpatient treatment. While a person is in residential substance abuse treatment,  
7 he or she shall not be eligible for good time except as provided in this  
8 subsection.

9 (4) The Department shall:

10 (A) ensure that all victims of record are notified of the earned good  
11 time program at its outset and made aware of the option to receive notifications  
12 from the Department pursuant to this subdivision;

13 (B) provide timely notice ~~no~~ not less frequently than every 90 days to  
14 the offender ~~and to any victim of record~~ any time the offender receives a  
15 reduction in his or her term of supervision pursuant to this section, ~~and the~~  
16 Department shall;

17 (C) maintain a system that documents and records all such reductions  
18 in each offender's permanent record; and

19 (D) record any reduction in an offender's term of supervision  
20 pursuant to this section on a monthly basis and ensure that victims who want

1 information regarding changes in scheduled release dates have access to such  
2 information.

3 ~~(5) The program shall become effective upon the Department's adoption~~  
4 ~~of final proposed rules pursuant to 3 V.S.A. § 843.~~

5 Sec. 15. 13 V.S.A. § 5305 is amended to read:

6 § 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

7 (a) Victims, other than victims of acts of delinquency, and affected persons  
8 shall have the right to request notification by the agency having custody of the  
9 defendant before the defendant is released, including a release on bail or  
10 conditions of release, furlough, or other community program, upon termination  
11 or discharge from probation, or whenever the defendant escapes, is recaptured,  
12 dies, or receives a pardon or commutation of sentence. Notice shall be given  
13 to the victim or affected person as expeditiously as possible at the address or  
14 telephone number provided to the agency having custody of the defendant by  
15 the person requesting notice. Any address or telephone number so provided  
16 shall be kept confidential. The prosecutor's office shall ensure that victims are  
17 made aware of their right to notification of an offender's scheduled release  
18 date pursuant to this section.

19 (b) If the defendant is released on conditions at arraignment, the  
20 prosecutor's office shall inform the victim of a listed crime of the conditions of  
21 release.

1 (c) If requested by a victim of a listed crime, the Department of Corrections  
2 shall:

3 (1) at least 30 days before a parole board hearing concerning the  
4 defendant, inform the victim of the hearing and of the victim’s right to testify  
5 before the parole board or to submit a written statement for the parole board to  
6 consider; and

7 (2) promptly inform the victim of the decision of the parole board,  
8 including providing to the victim any conditions attached to the defendant’s  
9 release on parole.

10 Sec. 16. 28 V.S.A. § 808d is amended to read:

11 § 808d. DEFINITION; ELIGIBLE MISDEMEANOR; ~~FURLOUGH AT~~  
12 ~~THE DISCRETION OF THE DEPARTMENT~~

13 ~~For purposes of sections 808a-808e~~ As used in section 808c of this title,  
14 “eligible misdemeanor” means a misdemeanor crime that is not one of the  
15 following crimes:

16 \* \* \*

17 \* \* \* Absconding and Escape \* \* \*

18 Sec. 17. 28 V.S.A. § 808e is amended to read:

19 § 808e. ABSCONDING FROM FURLOUGH; WARRANT

20 (a) The Commissioner of Corrections may issue a warrant for the arrest of  
21 a person who has absconded from furlough status in violation of ~~subdivision~~



1 ~~subsection 808(a)(6), subsection 808(e) or 808(f)~~, or section 808a, 808b, or  
2 808c of this title, requiring the person to be returned to a correctional facility.  
3 A law enforcement officer who is provided with a warrant issued pursuant to  
4 this section shall execute the warrant and return the person who has absconded  
5 from furlough to the Department of Corrections.

6 (b) A person for whom an arrest warrant is issued pursuant to this section  
7 shall not earn credit toward service of his or her sentence for any days that the  
8 warrant is outstanding.

9 Sec. 18. 13 V.S.A. § 1501 is amended to read:

10 § 1501. ESCAPE AND ATTEMPTS TO ESCAPE

11 (a) A person who, while in lawful custody:

12 (1) escapes or attempts to escape from any correctional facility or a local  
13 lockup shall be imprisoned for not more than 10 years or fined not more than  
14 \$5,000.00, or both; or

15 (2) escapes or attempts to escape from an officer, if the person was in  
16 custody as a result of a felony, shall be imprisoned for not more than 10 years  
17 or fined not more than \$5,000.00, or both; or if the person was in custody as a  
18 result of a misdemeanor, shall be imprisoned for not more than two years; or  
19 fined not more than \$1,000.00, or both.

20 (b)(1) A person shall not, while in lawful custody:

1 (A) fail to return from work release to the correctional facility at the  
2 specified time, or visits other than the specified place, as required by the order  
3 issued in accordance with 28 V.S.A. § 753;

4 (B) fail to return from furlough to the correctional facility at the  
5 specified time, or visits other than the specified place, as required by the order  
6 issued in accordance with 28 V.S.A. § 808(a)(1)–(5) or § 723;

7 (C) escape or attempt to escape while on release from a correctional  
8 facility to do work in the service of such facility or of the Department of  
9 Corrections in accordance with 28 V.S.A. § 758; or

10 (D) elope or attempt to elope from the Vermont Psychiatric Care  
11 Hospital or a participating hospital, when confined by court order pursuant to  
12 chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703  
13 and while still serving a sentence.

14 (2) A person who violates this subsection shall be imprisoned for not  
15 more than five years or fined not more than \$1,000.00, or both.

16 (3) ~~It shall not be a violation of subdivision (1)(A), (1)(B), or (1)(C) of~~  
17 ~~this subsection (b) if~~ If the person is on furlough status pursuant to 28 V.S.A.  
18 § 808(a)(6)723, 808(e), 808(f), or 808a, 808b, or 808e a violation of this  
19 subdivision (1) of this subsection requires a showing that the person intended  
20 to escape from furlough.

1 (c) All sentences imposed under subsection (a) of this section shall be  
2 consecutive to any term or sentence being served at the time of the offense.

3 (d) As used in this section:

4 (1) “No refusal system” means a system of hospitals and intensive  
5 residential recovery facilities under contract with the Department of Mental  
6 Health that provides high intensity services, in which the facilities shall admit  
7 any individual for care if the individual meets the eligibility criteria established  
8 by the Commissioner in contract.

9 (2) “Participating hospital” means a hospital under contract with the  
10 Department of Mental Health to participate in the no refusal system.

11 (3) [Repealed.]

12 \* \* \* Reports to General Assembly \* \* \*

13 Sec. 19. RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM  
14 STUDY AND RECOMMENDATIONS; VERMONT  
15 SENTENCING COMMISSION

16 (a) During the 2020 legislative interim, the Racial Disparities in the  
17 Criminal and Juvenile Justice System Advisory Panel, the Executive Director  
18 of Racial Equity, the Chief Superior Judge, the Attorney General, the Defender  
19 General, the Department of Corrections, and the Executive Director of the  
20 Department of State’s Attorneys and Sheriffs shall work with Crime Research  
21 Group to identify existing data that explores the relationships between

1 demographic factors and sentencing outcomes and determine whether and  
2 where current data systems and collections are insufficient for additional  
3 analyses and what staffing or resources are needed to support more robust  
4 reporting. Relevant data shall include plea agreements, sentence types and  
5 length, criminal history, offense severity, and any other metric that may further  
6 identify differences in how people are charged and sentenced by county, race,  
7 and gender. The stakeholders identified in this subsection shall also:

8 (1) Perform an initial analysis of sentencing patterns across the State to  
9 identify where the use and length of incarceration may result in or exacerbate  
10 racial disparities and make any related proposals for legislative action,  
11 including recommendations for further study.

12 (2) Jointly report their findings pursuant to this subsection and any  
13 associated recommendations pursuant to subdivisions (1) and (2) of this  
14 subsection to the Joint Legislative Justice Oversight Committee and the  
15 Vermont Sentencing Commission on or before December 1, 2020. The report  
16 shall include any dissenting opinions among the stakeholders.

17 (b)(1) The Vermont Sentencing Commission shall consider relevant  
18 findings and recommendations developed by the stakeholder group pursuant to  
19 subsection (a) of this section and:

1           (A) consider whether changes to Vermont’s sentencing structure are  
2           necessary to address the findings and implement the recommendations  
3           developed by the stakeholder group; and

4           (B) if it deems appropriate, issue nonbinding guidance for offenses  
5           for which there are racial and geographic disparities in sentencing.

6           (2) On or before February 26, 2021, the Vermont Sentencing  
7           Commission shall report to the House and Senate Committees on Judiciary and  
8           the House Committee on Corrections and Institutions on its determinations  
9           pursuant to subdivision (1) of this subsection.

10       Sec. 20. PAROLE REPORT; JUDICIARY; PAROLE BOARD

11       On or before January 15, 2022, the Chair of the Vermont Parole Board shall  
12       report to the Senate Committee on Judiciary and the House Committee on  
13       Corrections and Institutions on the implementation of presumptive parole as  
14       established by 28 V.S.A. §§ 501a and 502a. The report shall include an  
15       analysis of the current administrative burden of presumptive parole and the  
16       anticipated administrative burden of expanding presumptive parole eligibility  
17       to offenders who have committed a listed crime as defined in 13 V.S.A.  
18       § 5201.

1       Sec. 21. JUSTICE REINVESTMENT II WORKING GROUP; OVERSIGHT  
2                   AND IMPLEMENTATION OF JUSTICE REINVESTMENT II

3           (a) Justice Reinvestment II Working Group. The Justice Reinvestment II  
4       Working Group, established by the Governor in Executive Order 03-19, shall  
5       oversee the implementation of Justice Reinvestment II as provided in this  
6       section. A representative of the Vermont Parole Board shall join the Justice  
7       Reinvestment II Working Group to carry out the duties set forth in this section.

8           (b) Duties. The Working Group shall provide oversight over the rollout of  
9       Justice Reinvestment II, including the implementation of case reviews and  
10       releases for individuals newly eligible for presumptive parole, calculations of  
11       earned good time for eligible individuals within Department of Corrections  
12       facilities, and the Department's efforts to assess how its graduated sanctions  
13       are implemented in local field offices in compliance with Sec. 23 of this act.  
14       The Working Group shall also work with the Council on State Governments  
15       to:

16           (1) based on the information provided by the Agency of Human  
17       Services pursuant to Sec. 22 of this act, identify current screening, assessment,  
18       and case planning gaps for incarcerated individuals and propose system  
19       improvements for minimizing gaps in screening and assessment and ensuring  
20       case plans reflect both the individual's identified criminogenic and behavioral  
21       health needs;

- 1           (2) identify tools to assist in identifying specific offender risk factors  
2           that can be targeted with services and treatment programs based on evidence-  
3           based practices shown to be effective in reducing recidivism;
- 4           (3) determine how to share information about risk assessments and  
5           available Department and community-based programming among each other to  
6           inform plea agreement, sentencing, and probation revocation decisions;
- 7           (4) study the efficacy of using probation as a presumptive sentencing  
8           structure for certain types of offenses for which connections to community-  
9           based programming leads to better outcomes;
- 10           (5) evaluate the policy of probationers earning one day of credit towards  
11           their suspended sentence for each day served on probation without violation,  
12           including:
- 13           (A) how best to implement such a policy without impacting the  
14           length of probation terms or suspended sentences imposed;
- 15           (B) whether the credit accrued should apply to both the minimum and  
16           maximum suspended sentences;
- 17           (C) whether accrual of credit equal to the imposed maximum term of  
18           imprisonment or statutory maximum term of imprisonment for the offense  
19           should result in the termination and discharge of probation; and

1           (D) whether terms of probation for misdemeanors should be for a  
2           specific duration, not to exceed two years, or if the court should have  
3           discretion to impose a longer term in the interests of justice;

4           (6) explore additional options, including an option modeled after  
5           probation midpoint reviews provided for in 28 V.S.A. § 252(d), for allowing  
6           release from probation prior to the end of the imposed probation term, either in  
7           addition to or instead of a policy for providing one day of credit towards a  
8           suspended sentence for each day served on probation without violation as  
9           detailed in subdivision (5) of this subsection;

10           (7) evaluate the appeal process set forth in Sec. 12 of this Act for  
11           offenders on community supervision furlough who are returned to a  
12           correctional facility for 30 days or longer for a technical violation as an  
13           appropriate due process mechanism for offenders returned from furlough;

14           (8) develop funding and appropriation recommendations for future  
15           justice reinvestments; and

16           (9) recommend any necessary legislative action based on information  
17           gathered during the implementation of this act.

18           (c) Reports.

19           (1) On or before January 15, 2021, the Working Group shall report to  
20           the House and Senate Committees on Judiciary and the House Committee on  
21           Corrections and Institutions on the results of its work pursuant to subdivisions



1 (2)–(7) of subsection (b) of this section and suggested legislative action  
2 regarding probation and earned credit on probation, a process by which  
3 offenders may appeal certain furlough revocations or interrupts by the  
4 Department, and how to ensure sentencing, revocation, and plea agreement  
5 decisions are informed by available programming, including community  
6 treatment programs and individual risk assessment information.

7 (2) On or before January 15, 2022, the Working Group shall report to  
8 the House and Senate Committees on Judiciary and the House Committee on  
9 Corrections and Institutions with its findings pursuant to subsection (b) of this  
10 section and any recommendations for legislative action.

11 Sec. 22. AGENCY OF HUMAN SERVICES; REPORT TO JUSTICE

12 REINVESTMENT II WORKING GROUP

13 On or before December 1, 2020, the Agency of Human Services, with  
14 assistance from the Council of State Governments Justice Center, shall  
15 coordinate the provision of the following information to the Justice

16 Reinvestment II Working Group:

17 (1) the nature and scope of available screening and assessment of mental  
18 health and substance use needs among incarcerated populations, and how  
19 screening and assessment results inform case plans for sentenced individuals  
20 while they are incarcerated and prior to their release into community  
21 supervision, including individuals on probation; and

1           (2) the existing behavioral health collaborative care coordination and  
2           case management protocols that serve people in Department of Corrections  
3           custody or supervision and any existing challenges to information sharing  
4           between service providers and the Department.

5           Sec. 23. 2020 Acts and Resolves No. 88, Sec. 70a is amended to read:

6           Sec. 70a. DEPARTMENT OF CORRECTIONS; GRADUATED  
7                               SANCTIONS; REENTRY HOUSING; REPORT

8           (a) On or before ~~April 1, 2020~~ January 15, 2021, the Department of  
9           Corrections shall report to the Senate Committee on Judiciary, the House  
10          Committee on Corrections and Institutions, and the House and Senate  
11          Committees on Appropriations on how to strengthen existing graduated  
12          sanctions and incentives policies to ensure they reflect current research on best  
13          practices for responses to violation behavior that most effectively achieve  
14          behavior change and uphold public safety. The Department shall also identify  
15          reentry housing needs for corrections populations. As a part of this work, the  
16          Department shall submit its recommendations including initial cost estimates  
17          regarding:

18               (1) formalizing the use of ~~incentives and sanctions~~ positive to negative  
19               reinforcements in supervision practices at a 4:1 ratio and require ~~incentives~~  
20               reinforcements to be entered and tracked in the community supervision case  
21               management system;

1 \* \* \*

2 \* \* \* Appropriation and Repeals \* \* \*

3 Sec. 24. JUSTICE REINVESTMENT II APPROPRIATION

4 (a) In FY21, \$2,000,000.00 is appropriated from the General Fund to the  
5 Agency of Human Services to fund Justice Reinvestment II investments as  
6 follows:

7 (1) \$400,000.00 is reserved for risk-based domestic violence  
8 intervention programming available in communities that are certified by the  
9 Vermont Council on Domestic Violence, and statewide coordination of those  
10 efforts through the Vermont Council on Domestic Violence. On or before  
11 January 15, 2021, the Vermont Network against Domestic and Sexual  
12 Violence will provide an interim report to the House and Senate Committees  
13 on Judiciary and the House Committee on Corrections and Institutions on  
14 progress related to outcome indicators for domestic violence accountability  
15 programming. On or before January 15, 2022, the Network shall provide a  
16 final report to the same committees.

17 (2) \$1,000,000.00 is reserved for additional evidence-based transitional  
18 housing programming.

19 (3) The remainder is reserved for evidence-based programming for  
20 offenders transitioning back into the community, including workforce  
21 development and other community reentry supports.

1       (b) The General Assembly intends that this appropriation of onetime funds  
2       is to immediately invest funds to reduce recidivism and increase public safety,  
3       and for savings achieved in and FY21 as a result of the legislative action taken  
4       in this act to be used to fund these investments in FY22 and in the future.

5       Sec. 25. REPEALS

6       28 V.S.A. § 808b (home confinement furlough) and 28 V.S.A. § 808c  
7       (reintegration furlough) are repealed on January 1, 2021.

8                               \* \* \* Effective Dates \* \* \*

9       Sec. 26. EFFECTIVE DATES

10       (a) This section and Secs. 14 (earned good time; reduction of term) and 25  
11       (repeals) shall take effect on passage.

12       (b) Sec. 12 (terms and conditions of community supervision furlough) shall  
13       take effect on July 1, 2021.

14       (c) Sec. 5 (presumptive parole) shall take effect on January 1, 2023.

15       (d) All other sections shall take effect on January 1, 2021.

16

17

18       (Committee vote: \_\_\_\_\_)

19

20

21

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE