

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 last three years, the average annual proportion of
6 admissions to sentenced incarceration that were people returning or being
7 revoked from furlough, parole, and probation was 78 percent.

8 (7) Vermont incarcerates more people than current facilities can
9 accommodate and that 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.

***** Probation *****

1
2 ~~Sec. 2. 13 V.S.A. § 7031 is amended to read:~~

3 ~~§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS~~

4 ~~(a) When a respondent is sentenced to any term of imprisonment, other~~
5 ~~than for life, the court imposing the sentence shall not fix the term of~~
6 ~~imprisonment, unless the term is definitely fixed by statute, but shall establish~~
7 ~~a maximum and may establish a minimum term for which the respondent may~~
8 ~~be held in imprisonment. The maximum term shall not be more than the~~
9 ~~longest term fixed by law for the offense of which the respondent is convicted,~~
10 ~~and the minimum term shall be not less than the shortest term fixed by law for~~
11 ~~the offense. If the court suspends a portion of the sentence, the unsuspended~~
12 ~~portion of the sentence shall be the minimum term of sentence solely for the~~
13 ~~purpose of any reductions of term for good behavior as set forth in 28 V.S.A.~~
14 ~~§ 811. A sentence shall not be considered fixed as long as the maximum and~~
15 ~~minimum terms are not identical.~~

16 ~~(b) The sentence of imprisonment of any person convicted of an offense~~
17 ~~shall commence to run from the date on which the person is received at the~~
18 ~~correctional facility for service of the sentence. The court shall give the person~~
19 ~~credit toward service of his or her sentence for any days spent in custody as~~
20 ~~follows:~~

1 ~~(1) The period of credit for concurrent and consecutive sentences shall~~
2 ~~include all days served from the date of arraignment or the date of the earliest~~
3 ~~detention for the offense, whichever occurs first, and end on the date of the~~
4 ~~sentencing. Only a single credit shall be awarded in cases of consecutive~~
5 ~~sentences, and no credit for one period of time shall be applied to a later~~
6 ~~period.~~

7 ~~(2) In sentencing a violation of probation, the court shall give the person~~
8 ~~credit for any days spent in custody from the time the violation is filed or the~~
9 ~~person is detained on the violation, whichever occurs first, until the violation is~~
10 ~~sentenced. In a case in which probation is revoked and the person is ordered to~~
11 ~~serve the underlying sentence, the person shall receive credit for all time~~
12 ~~previously served in connection with the offense and all time served on~~
13 ~~probation prior to the time the violation is filed.~~

14 ~~(3) A defendant who has received pre-adjudication treatment in a~~
15 ~~residential setting for a substance use disorder after the charge has been filed~~
16 ~~shall earn a reduction of one day in the offender's minimum and maximum~~
17 ~~sentence for each day that the offender receives the inpatient treatment.~~

18 ~~(c) If any such person is committed to a jail or other place of detention to~~
19 ~~await transportation to the place at which his or her sentence is to be served,~~
20 ~~his or her sentence shall commence to run from the date on which he or she is~~
21 ~~received at the jail or the place of detention.~~

1 ~~(d) A person who receives a zero minimum sentence for a conviction of a~~
2 ~~nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301~~
3 ~~shall report to probation and parole as directed by the court and begin to serve~~
4 ~~the sentence in the community immediately, unless the person is serving a~~
5 ~~prior sentence at the time.~~

6 Sec. 3. 28 V.S.A. § 205 is amended to read:

7 ~~§ 205. PROBATION~~

8 ~~(a)(1) After passing sentence, a court may suspend all or part of the~~
9 ~~sentence and place the person so sentenced in the care and custody of the~~
10 ~~Commissioner upon such conditions and for such time as it may prescribe in~~
11 ~~accordance with law or until further order of court. All terms of probation set~~
12 ~~by the court shall be for a specific duration, not to exceed the statutory~~
13 ~~maximum term of imprisonment for the offense.~~

14 ~~(2) The term of probation for misdemeanors shall be for a specific term~~
15 ~~not to exceed two years unless the court, in its sole discretion, specifically~~
16 ~~finds that the interests of justice require a longer or an indefinite period of~~
17 ~~probation that exceeds two years.~~

18 ~~(3)(A) The term of probation for nonviolent felonies shall not exceed~~
19 ~~four years or the statutory maximum term of imprisonment for the offense,~~
20 ~~whichever is less, unless the court, in its sole discretion, specifically finds that~~
21 ~~the interests of justice require a longer or an indefinite period of probation that~~

1 ~~exceeds four years or the statutory maximum term of imprisonment for the~~
2 ~~offense, whichever is less.~~

3 ~~(B) As used in this subdivision, “nonviolent felonies” means an~~
4 ~~offense that is not:~~

5 ~~(i) a listed crime as defined in 13 V.S.A. § 5301(7); or~~

6 ~~(ii) an offense involving sexual exploitation of children in~~
7 ~~violation of 13 V.S.A. chapter 64.~~

8 ~~(4) Nothing in this subsection shall prevent the court from terminating~~
9 ~~the period of probation and discharging a person pursuant to section 251 of this~~
10 ~~title.~~

11 ~~(5) The probation officer of a person on probation for a specific term~~
12 ~~shall review the person’s case file during probation and, not less than 45 days~~
13 ~~prior to the expiration of the probation term, may file a petition with the court~~
14 ~~requesting the court to extend the period of probation for a specific term not to~~
15 ~~exceed one year in order to provide the person the opportunity to complete~~
16 ~~programming consistent with special conditions of probation. A hearing on the~~
17 ~~petition for an extension of probation under this subsection shall comply with~~
18 ~~the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal~~
19 ~~Procedure.~~

20 ~~(b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for~~
21 ~~which the offender has been placed on probation shall have the right to request~~

1 and receive from the Department of Corrections information regarding the
2 offender's general compliance with the specific conditions of probation.

3 Nothing in this section shall require the Department of Corrections to disclose
4 any confidential information revealed by the offender in connection with
5 participation in a treatment program.

6 (c)(1) ~~Unless the court in its discretion finds that the interests of justice~~
7 ~~require additional standard and special conditions of probation, when the court~~
8 ~~orders a specific term of probation for a qualifying offense, the offender shall~~
9 ~~be placed on administrative probation, which means that the only conditions of~~
10 ~~probation shall be that the probationer:~~

11 (A) ~~register with the Department of Corrections' probation and~~
12 ~~parole office in his or her district;~~

13 (B) ~~notify the probation officer of his or her current address each~~
14 ~~month;~~

15 (C) ~~within 72 hours, notify the Department of Corrections if probable~~
16 ~~cause is found for a criminal offense during the term of probation; and~~

17 (D) ~~not be convicted of a criminal offense during the term of~~
18 ~~probation.~~

19 (2) ~~As used in this subsection, "qualifying offense" means:~~

20 (A) ~~Unlawful mischief under 13 V.S.A. § 3701.~~

21 (B) ~~Retail theft under 13 V.S.A. §§ 2575 and 2577.~~

- 1 ~~(C) Operating after suspension or revocation of license under~~
2 ~~23 V.S.A. § 674(a).~~
- 3 ~~(D) Bad checks under 13 V.S.A. § 2022.~~
- 4 ~~(E) Theft of services under 13 V.S.A. § 2582.~~
- 5 ~~(F) Disorderly conduct under 13 V.S.A. § 1026, unless the original~~
6 ~~charge was a listed offense as defined in 13 V.S.A. § 5301(7).~~
- 7 ~~(G) Theft of rented property under 13 V.S.A. § 2591.~~
- 8 ~~(H) Operation without consent of owner under 23 V.S.A. § 1094(a).~~
- 9 ~~(I) Petit larceny under 13 V.S.A. § 2502.~~
- 10 ~~(J) Negligent operation of a motor vehicle under 23 V.S.A.~~
11 ~~§ 1091(a).~~
- 12 ~~(K) False reports to law enforcement under 13 V.S.A. § 1754.~~
- 13 ~~(L) Setting fires under 13 V.S.A. § 508.~~
- 14 ~~(M) [Repealed.]~~
- 15 ~~(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)~~
16 ~~unless the original charge was a listed offense as defined in 13 V.S.A.~~
17 ~~§ 5301(7).~~
- 18 ~~(O) Unlawful trespass under 13 V.S.A. § 3705(a).~~
- 19 ~~(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).~~

1 ~~(3) Nothing in this subsection shall prohibit a court from requiring~~
2 ~~participation in the Restorative Justice Program established in chapter 12 of~~
3 ~~this title.~~

4 ~~(d) All probationers, including those currently serving a term of probation,~~
5 ~~shall receive one day of credit towards the probationer's minimum sentence for~~
6 ~~each day served on probation. The probationer shall cease accruing credit~~
7 ~~towards the minimum sentence the day an arrest warrant for the probationer is~~
8 ~~filed. If the court finds that the probationer violated the terms of probation and~~
9 ~~returns the person to probation, the court shall determine whether the person~~
10 ~~may again accrue credit towards the minimum sentence and when the accrual~~
11 ~~shall commence. The court shall indicate the amount of credit to apply on the~~
12 ~~sentencing document. If the court finds no violation occurred, there shall be no~~
13 ~~interruption in the probationer's accrual of credit.~~

14 ~~(3) Once a probationer accrues credit equal to the imposed maximum~~
15 ~~term of imprisonment for the offense, the court shall terminate the probation~~
16 ~~and discharge the person pursuant to section 251 of this title.~~

17 ~~Sec. 4. 28 V.S.A. § 304 is amended to read:~~

18 ~~§ 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF~~

19 ~~——— PROBATION~~

20 ~~(a) Revocation and imposition of sentence.~~

1 ~~(1) If a violation is established by a proceeding conducted in accordance~~
2 ~~with section 302 of this title, the court may, in its discretion, revoke probation~~
3 ~~and require the probationer to serve the remainder of the sentence that was~~
4 ~~suspended or order that the remainder of the sentence be served in the~~
5 ~~community pursuant to the provisions of chapter 6 of this title.~~

6 ~~(2) In the event the court revokes probation and requires the probationer~~
7 ~~to serve the suspended sentence pursuant to this section, the duration of the~~
8 ~~remaining suspended sentence shall be reduced in accordance with~~
9 ~~subsection 205(d) of this title and 13 V.S.A. § 7031(b)(2). The court shall~~
10 ~~indicate the total number of days credited towards the minimum sentence on~~
11 ~~the sentencing document.~~

12 ~~(b) Alternative sanctions. As an alternative to revocation and imposition of~~
13 ~~sentence as provided in subsection (a) of this section, the court, in its~~
14 ~~discretion, after it has established that a violation occurred a violation has been~~
15 ~~established, may:~~

16 ~~(1) continue the probationer on the existing sentence;~~

17 ~~(2) effect, in accordance with subsection 253(b) of this title, necessary~~
18 ~~or desirable changes or enlargements in the conditions of probation;~~

19 ~~(3) conduct a formal or informal conference with the probationer in~~
20 ~~order to reemphasize to him or her the necessity of compliance with the~~
21 ~~conditions of probation;~~

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

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

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

11 Sec. 6. 28 V.S.A. § 501 is amended to read:

12 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

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

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

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

1 (3) If the inmate is 65 years of age or older, is not serving a sentence of
2 life without parole, and has served five years but not the minimum term of the
3 sentence, the inmate shall be eligible for parole consideration unless the inmate
4 has programming requirements that have not been fulfilled or has received a
5 major disciplinary rule violation within the previous 12 months.

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

7 § 501a. PRESUMPTIVE PAROLE

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

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

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

16 (3) is compliant with the required services and programming portion of
17 the inmate’s case plan during the period of incarceration if the inmate is
18 incarcerated for less than 90 days or is compliant for the 90 days preceding the
19 completion of the inmate’s minimum term if the inmate is incarcerated for 90
20 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. 8. 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).

21 Sec. 9. 28 V.S.A. § 502 is amended to read:

1 § 502. PAROLE INTERVIEWS AND REVIEWS

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (f) The Board ~~may~~, when formulating the conditions of a parole, shall take
15 into consideration the emotional needs of the victim of an offender's crime
16 plus the needs of the victim's family.

17 Sec. 10. 28 V.S.A. § 502a is amended to read:

18 § 502a. RELEASE ON PAROLE

19 (a) ~~No~~ Except as otherwise provided in subsection (d) of this section and
20 section 501 of this title, no inmate serving a sentence with a minimum term

1 shall be released on parole until the inmate has served the minimum term of
2 the sentence, less any reductions for good behavior.

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

6 (1) the inmate is eligible for parole;

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

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

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

15 (d) Notwithstanding subsection (a) or (e) of this section, or any other
16 provision of law to the contrary, any inmate who is serving a sentence,
17 including an inmate who has not yet served the minimum term of the sentence,
18 who is diagnosed as having a terminal or serious medical condition so as to
19 render the inmate unlikely to be physically capable of presenting a danger to
20 society, may be released on medical parole to a hospital, hospice, other
21 licensed inpatient facility, or suitable housing accommodation as specified by

1 the Parole Board. Provided the inmate has authorized the release of his or her
2 personal health information, the Department shall promptly notify the Parole
3 Board upon receipt of medical information of an inmate’s diagnosis of a
4 terminal or serious medical condition. As used in this subsection, a “serious
5 medical condition” does not mean a condition caused by noncompliance with a
6 medical treatment plan.

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

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

20 (3)(A) Within 30 days of the inmate’s eligibility date, the Parole Board
21 shall conduct an administrative review of each inmate the Department

1 identifies as eligible for presumptive release that does not meet the risk criteria
2 set forth in subdivision (2) of this subsection. The Board may deny
3 presumptive release and set a hearing if it determines, through its
4 administrative review, that a victim or victims should have the opportunity to
5 participate in a parole hearing. If the Board determines there is a victim or
6 victims who should be notified, the Department shall notify the victim or
7 victims and the Board shall provide them with the opportunity to participate in
8 a parole hearing.

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

12 * * * Furlough * * *

13 Sec. 11. 28 V.S.A. § 808 is amended to read:

14 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

15 (a) The Department may extend the limits of the place of confinement of an
16 offender at any correctional facility if the offender agrees to comply with such
17 conditions of supervision the Department, in its sole discretion, deems
18 appropriate for that offender's furlough. The Department may authorize a
19 temporary furlough for a defined period for any of the following reasons:

20 (1) To visit a critically ill relative.

21 (2) To attend the funeral of a relative.

1 (3) To obtain medical services.

2 (4) To contact prospective employers.

3 (5) To secure a suitable residence for use upon discharge.

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

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

17 (c) The extension of the limits of the place of confinement authorized by
18 this section shall in no way be interpreted as a probation or parole of the
19 offender, but shall constitute solely a permitted extension of the limits of the
20 place of confinement for offenders committed to the custody of the
21 Commissioner.

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

9 (e) The Commissioner may place on medical furlough any offender who is
10 serving a sentence, including an offender who has not yet served the minimum
11 term of the sentence, who is diagnosed with a terminal or serious medical
12 condition so as to render the offender unlikely to be physically capable of
13 presenting a danger to society. The Commissioner shall develop a policy
14 regarding the application for, standards for eligibility of, and supervision of
15 persons on medical furlough. The offender may be released to a hospital,
16 hospice, other licensed inpatient facility, or other housing accommodation
17 deemed suitable by the Commissioner. As used in this subsection, a “serious
18 medical condition” does not mean a condition caused by noncompliance with a
19 medical treatment plan.

20 (f) ~~While appropriate community housing is an important consideration in~~
21 ~~release of offenders, the Department shall not use lack of housing as the sole~~

1 ~~factor in denying furlough to offenders who have served at least their~~
2 ~~minimum sentence for a nonviolent misdemeanor or nonviolent felony~~
3 ~~provided that public safety and the best interests of the offender will be served~~
4 ~~by reentering the community on furlough. The Department shall adopt rules to~~
5 ~~implement this subsection. [Repealed.]~~

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

8 Sec. 12. 28 V.S.A. § 808a is amended to read:

9 § 808a. TREATMENT FURLOUGH

10 (a) An offender may be sentenced to serve a term of imprisonment, but
11 placed by a court on treatment furlough to participate in such programs
12 administered by the Department in the community that reduce the offender's
13 risk to reoffend or that provide reparation to the community in the form of
14 supervised work activities.

15 (b) Provided the approval of the sentencing judge, if available, otherwise a
16 Superior Court judge, is first obtained, the Department may place on treatment
17 furlough an offender who has not yet served the minimum term of the
18 sentence, who, in the Department's determination, needs residential treatment
19 services not available in a correctional facility. The services may include
20 treatment for substance abuse or personal violence or any other condition that
21 the Department has determined should be addressed in order to reduce the

1 offender's risk to reoffend or cause harm to himself or herself or to others in
2 the facility. The offender shall be released only to a hospital or residential
3 treatment facility that provides services to the general population. The State's
4 share of the cost of placement in such a facility, net of any private or federal
5 participation, shall be paid pursuant to memoranda of agreement between and
6 within State agencies reflective of their shared responsibilities to maximize the
7 efficient and effective use of State resources. In the event that a memorandum
8 of agreement cannot be reached, the Secretary of Administration shall make a
9 final determination as to the manner in which costs will be allocated.

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

18 ~~(2) Driving under the influence of alcohol or drugs, second offense, as~~
19 ~~defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of~~
20 ~~alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be~~

1 ~~considered eligible misdemeanors for the sole purpose of subdivision (1) of~~
2 ~~this subsection. [Repealed.]~~

3 Sec. 13. 28 V.S.A. § 723 is amended to read:

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

5 FURLOUGH

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

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

13 (2) is ineligible for or refuses presumptive parole pursuant to section
14 501a of this title or has been returned or revoked to prison for a violation of
15 conditions of parole, furlough, or probation; and

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

19 (b) The offender's continued supervision in the community is conditioned
20 on the offender's commitment to and satisfactory progress in his or her reentry

1 program and on the offender’s compliance with any terms and conditions
2 identified by the Department.

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

11 Sec. 14. 28 V.S.A. § 724 is amended to read:

12 § 724. TERMS AND CONDITIONS OF ~~CONDITIONAL REENTRY~~
13 COMMUNITY SUPERVISION FURLOUGH

14 (a) Authority of the Department. The Department shall identify in the
15 terms and conditions of ~~conditional reentry~~ community supervision furlough
16 those programs necessary to reduce the offender’s risk of reoffense and to
17 promote the offender’s accountability for progress in the reintegration process.
18 The Department shall make all determinations of violations of conditions of
19 community supervision furlough pursuant to this subchapter and any resulting
20 change in status or termination of community supervision furlough status.

1 (b) 30-day interrupt or revocation. Any interruption of an offender’s
2 community supervision furlough after the Department has found a technical
3 violation of furlough conditions shall trigger a Department Central Office case
4 staffing review and Department notification to the Office of the Defender
5 General if the interruption will exceed 30 days.

6 (c) Appeal. An offender whose furlough status is revoked or interrupted
7 for 30 days or longer shall have the right to appeal the Department’s
8 determination to the Civil Division of the Superior Court in accordance with
9 Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based
10 on a de novo review of the record. The appellant may offer testimony, and, in
11 its discretion for good cause shown, the court may accept additional evidence
12 to supplement the record. The appellant shall have the burden of proving by a
13 preponderance of the evidence that the Department abused its discretion in
14 imposing a furlough revocation or interrupt that exceeds 30 days pursuant to
15 subsection (d) of this section.

16 (d) Technical violations.

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

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

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

4 (B) the violation or pattern of violations indicate the offender poses a
5 danger to others or to the community or poses a threat to abscond or escape
6 from furlough.

7 Sec. 15. 28 V.S.A. § 725 is amended to read:

8 § 725. PAROLE HEARING FOR OFFENDERS ON ~~CONDITIONAL~~
9 ~~REENTRY~~ COMMUNITY SUPERVISION FURLOUGH

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

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

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

1 Sec. 16. 28 V.S.A. § 818 is amended to read:

2 § 818. EARNED GOOD TIME; REDUCTION OF TERM

3 (a) On or before ~~July 1, 2020~~ September 1, 2020, the Department of
4 Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25
5 implementing an earned good time program to become effective on January 1,
6 2021. The Commissioner shall adopt rules to carry out the provisions of this
7 section as an emergency rule and concurrently propose them as a permanent
8 rule. The emergency rule shall be deemed to meet the standard for the
9 adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

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

12 (1) The program shall be available for all sentenced offenders, including
13 furloughed offenders, provided that the program shall not be available to
14 offenders on probation or parole, to offenders eligible for a reduction of term
15 pursuant to section 811 of this title, or to offenders sentenced to life without
16 parole. For offenders currently serving a sentence at the time the program is
17 implemented, any reduction shall be calculated based on the offender's
18 sentence going forward in time.

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

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

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

5 ~~(C) complies with a merit based system designed to incentivize~~
6 ~~offenders to meet milestones identified by the Department that prepare~~
7 ~~offenders for reentry, if the offender has received a sentence of greater than~~
8 ~~one year.~~

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

15 (4) **The Department shall:**

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

19 (B) provide timely notice ~~no~~ not less frequently than every 90 days to
20 the offender ~~and to any victim of record~~ any time the offender receives a

1 reduction in his or her term of supervision pursuant to this section, ~~and the~~
2 ~~Department shall:~~

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

5 (D) record any reduction in an offender's term of supervision pursuant
6 to this section in the Offender Management System on a monthly basis and
7 transfer the data regularly to the Department's Automated Notification System
8 as a calculated scheduled release date.

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

11 Sec. X. 13 V.S.A. § 5305 is amended to read:

12 § 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

13 (a) Victims, other than victims of acts of delinquency, and affected persons
14 shall have the right to request notification by the agency having custody of the
15 defendant before the defendant is released, including a release on bail or
16 conditions of release, furlough or other community program, upon termination
17 or discharge from probation, or whenever the defendant escapes, is recaptured,
18 dies, or receives a pardon or commutation of sentence. Notice shall be given to
19 the victim or affected person as expeditiously as possible at the address or
20 telephone number provided to the agency having custody of the defendant by
21 the person requesting notice. Any address or telephone number so provided

1 shall be kept confidential. The prosecutor’s office shall ensure that victims are
2 made aware of their right to notification of an offender’s scheduled release
3 date pursuant to this section.

4 (b) If the defendant is released on conditions at arraignment, the
5 prosecutor’s office shall inform the victim of a listed crime of the conditions of
6 release.

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

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

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

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

17 § 808d. DEFINITION; ELIGIBLE MISDEMEANOR; ~~FURLOUGH AT~~

18 ~~THE DISCRETION OF THE DEPARTMENT~~

19 ~~For purposes of sections 808a–808e~~ As used in section 808c of this title,
20 “eligible misdemeanor” means a misdemeanor crime that is not one of the
21 following crimes:

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* * * Absconding and Escape * * *

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

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

(a) The Commissioner of Corrections may issue a warrant for the arrest of a person who has absconded from furlough status in violation of ~~subdivision subsection~~ subsection 808(a)(6), ~~subsection 808(e) or 808(f)~~, or section 808a, 808b, or 808c of this title, requiring the person to be returned to a correctional facility.

A law enforcement officer who is provided with a warrant issued pursuant to this section shall execute the warrant and return the person who has absconded from furlough to the Department of Corrections.

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

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

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

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

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

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

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

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

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

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

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

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

1 (a) During the 2020 legislative interim, the Racial Disparities in the
2 Criminal and Juvenile Justice System Advisory Panel, the Executive Director
3 of Racial Equity, the Chief Superior Judge, the Attorney General, the Defender
4 General, the Department of Corrections, and the Executive Director of the
5 Department of State’s Attorneys and Sheriffs shall work with Crime Research
6 Group to identify existing data that explores the relationships between
7 demographic factors and sentencing outcomes and determine whether and
8 where current data systems and collections are insufficient for additional
9 analyses and what staffing or resources are needed to support more robust
10 reporting. Relevant data shall include plea agreements, sentence types and
11 length, criminal history, offense severity, and any other metric that may further
12 identify differences in how people are charged and sentenced by county, race,
13 and gender. The stakeholders identified in this subsection shall also:
14 (1) perform an initial analysis of sentencing patterns across the State to
15 identify where the use and length of incarceration may result in or exacerbate
16 racial disparities and make any related proposals for legislative action,
17 including recommendations for further study; and
18 (2) jointly report their findings pursuant to this subsection and any
19 associated recommendations pursuant to subdivisions (1) and (2) of this
20 subsection to the Joint Legislative Justice Oversight Committee and the

1 Vermont Sentencing Commission on or before December 1, 2020. The report
2 shall include any dissenting opinions among the stakeholders.

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

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

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

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

15 **Sec. 20. PAROLE REPORT; JUDICIARY; PAROLE BOARD**

16 On or before January 15, 2022, the Chair of the Vermont Parole Board shall
17 report to the Senate Committee on Judiciary and the House Committee on
18 Corrections and Institutions on the implementation of presumptive parole as
19 established by 28 V.S.A. § § 501a and 502a. The report shall include an
20 analysis of the current administrative burden of presumptive parole and the
21 anticipated administrative burden of expanding presumptive parole eligibility

1 to offenders who have committed a listed crime as defined in 13 V.S.A.

2 § 5201.

3 Sec. 21. JUSTICE REINVESTMENT II WORKING GROUP; OVERSIGHT
4 AND IMPLEMENTATION OF JUSTICE REINVESTMENT II

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

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

16 The Working Group shall also work with the Council on State Governments
17 to:

18 (1) based on the information provided by the Agency of Human
19 Services pursuant to Sec. 22 of this act, identify current screening, assessment,
20 and case planning gaps for incarcerated individuals and propose system
21 improvements for minimizing gaps in screening and assessment and ensuring

1 case plans reflect both the individual’s identified criminogenic and behavioral
2 health needs;

3 (2) identify tools to assist in identifying specific offender risk factors
4 that can be targeted with services and treatment programs based on evidence-
5 based practices shown to be effective in reducing recidivism;

6 (3) determine how to share information about risk assessments and
7 available Department and community-based programming among each other to
8 inform plea agreement, sentencing, and probation revocation decisions;

9 (4) study the efficacy of using probation as a presumptive sentencing
10 structure for certain types of offenses for which connections to community-
11 based programming leads to better outcomes;

12 (5) evaluate the policy of probationers earning one day of credit towards
13 their suspended sentence for each day served on probation without violation,
14 including:

15 (A) how best to implement such a policy without impacting the
16 length of probation terms or suspended sentences imposed;

17 (B) whether the credit accrued should apply to both the minimum and
18 maximum suspended sentences;

19 (C) whether accrual of credit equal to the imposed maximum term of
20 imprisonment or statutory maximum term of imprisonment for the offense
21 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) develop funding and appropriation recommendations for future
11 justice reinvestments; and

12 (8) recommend any necessary legislative action based on information
13 gathered during the implementation of this act.

14 (c) Reports.

15 (1) On or before January 15, 2021, the Working Group shall report to
16 the House and Senate Committees on Judiciary and the House Committee on
17 Corrections and Institutions on the results of its work pursuant to subdivisions
18 (2)–(6) of subsection (b) of this section and suggested legislative action
19 regarding probation and earned credit on probation, and how to ensure
20 sentencing, revocation, and plea agreement decisions are informed by available

1 programming, including community treatment programs and individual risk
2 assessment information.

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

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

8 REINVESTMENT II WORKING GROUP

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

12 Reinvestment II Working Group:

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

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

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

2 Sec. 70a. DEPARTMENT OF CORRECTIONS; GRADUATED
3 SANCTIONS; REENTRY HOUSING; REPORT

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

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

18 * * *

