

S.338

An act relating to justice reinvestment

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

Sec. 1. FINDINGS AND PURPOSE

(a) The General Assembly finds:

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

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

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

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

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

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

(7) Vermont incarcerates more people than current facilities can accommodate and that incarceration population is growing.

(b) The purpose of this act is to:

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

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

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

\* \* \* Probation \* \* \*

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

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless the term is definitely fixed by statute, but shall establish

a maximum and may establish a minimum term for which the respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted, and the minimum term shall be not less than the shortest term fixed by law for the offense. If the court suspends a portion of the sentence, the unsuspended portion of the sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as set forth in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

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

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

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

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

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

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

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

§ 205. PROBATION

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

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

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

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

- (i) a listed crime as defined in 13 V.S.A. § 5301(7); or
- (ii) an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

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

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

(b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for which the offender has been placed on probation shall have the right to request and receive from the Department of Corrections information regarding the offender's general compliance with the specific conditions of probation. Nothing in this section shall require the Department of Corrections to disclose any confidential information revealed by the offender in connection with participation in a treatment program.

(c)(1) Unless the court in its discretion finds that the interests of justice require additional standard and special conditions of probation, when the court

orders a specific term of probation for a qualifying offense, the offender shall be placed on administrative probation, which means that the only conditions of probation shall be that the probationer:

- (A) register with the Department of Corrections' probation and parole office in his or her district;
- (B) notify the probation officer of his or her current address each month;
- (C) within 72 hours, notify the Department of Corrections if probable cause is found for a criminal offense during the term of probation; and
- (D) not be convicted of a criminal offense during the term of probation.

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

- (A) Unlawful mischief under 13 V.S.A. § 3701.
- (B) Retail theft under 13 V.S.A. §§ 2575 and 2577.
- (C) Operating after suspension or revocation of license under 23 V.S.A. § 674(a).
- (D) Bad checks under 13 V.S.A. § 2022.
- (E) Theft of services under 13 V.S.A. § 2582.
- (F) Disorderly conduct under 13 V.S.A. § 1026, unless the original charge was a listed offense as defined in 13 V.S.A. § 5301(7).
- (G) Theft of rented property under 13 V.S.A. § 2591.

(H) Operation without consent of owner under 23 V.S.A. § 1094(a).

(I) Petit larceny under 13 V.S.A. § 2502.

(J) Negligent operation of a motor vehicle under 23 V.S.A.

§ 1091(a).

(K) False reports to law enforcement under 13 V.S.A. § 1754.

(L) Setting fires under 13 V.S.A. § 508.

(M) [Repealed.]

(N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)

unless the original charge was a listed offense as defined in 13 V.S.A.

§ 5301(7).

(O) Unlawful trespass under 13 V.S.A. § 3705(a).

(P) A first offense of possession under 18 V.S.A. § 4230(a)(1).

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

(d)(1) A probationer shall receive one day of credit towards the probationer's minimum sentence for each day served on probation. The probationer shall cease accruing credit towards the minimum sentence the day an arrest warrant for the probationer is filed. If the court finds that the probationer violated the terms of probation and returns the person to probation, the court shall determine whether the person may again accrue credit towards

the minimum sentence and when the accrual shall commence. If the court finds no violation occurred, there shall be no interruption in the probationer's accrual of credit.

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

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

§ 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF  
PROBATION

(a) Revocation and imposition of sentence.

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

(2) In the event the court revokes probation and requires the probationer to serve the suspended sentence pursuant to this section, the duration of the remaining suspended sentence shall be reduced in accordance with subsection 205(d) of this title and 13 V.S.A. § 7031(b)(2).

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

(1) continue the probationer on the existing sentence;

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

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

(4) issue a formal or informal warning to the probationer that further violations may result in revocation of probation by the court; or

(5) continue the probationer on the existing sentence, but require the probationer to serve any portion of the sentence.

(c) Guidelines. Prior to ordering either revocation or an alternative sanction for a violation of probation in accordance with subsection (b) of this section, the court shall consider, but has complete discretion whether to follow, sanction guidelines established by the Department of Corrections pursuant to subsection (e) of this section.

(d) Discretion of the court. No plea agreement shall limit the court's discretion under this section.

(e) Rules. The Department of Corrections shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation violations as an alternative to revocation and imposition of the remainder of the original sentence. These guidelines do not grant the Department any authority to impose sanctions for probation violations.

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

Sec. 5. 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. 6. 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) If the inmate's sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility.

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

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

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

§ 501a. PRESUMPTIVE PAROLE

An inmate who is serving a sentence of imprisonment shall be eligible for presumptive release in accordance with subsection 502a(e) of this title at the

expiration of the inmate's minimum or aggregate minimum term of imprisonment if the inmate:

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

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

(3) is compliant with the inmate's case plan during the period of incarceration if the inmate is incarcerated for less than 90 days or is compliant for the 90 days preceding the completion of the inmate's minimum term if the inmate is incarcerated for 90 days or more;

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

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

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

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

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

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

Sec. 8. 28 V.S.A. § 501a is amended to read:

§ 501a. PRESUMPTIVE PAROLE

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

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

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

(3) is compliant with the inmate's case plan during the period of incarceration if the inmate is incarcerated for less than 90 days or is compliant for the 90 days preceding the completion of the inmate's minimum term if the inmate is incarcerated for 90 days or more;

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

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

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

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

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

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

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

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

§ 502. PAROLE INTERVIEWS AND REVIEWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 502a. RELEASE ON PAROLE

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

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

- (1) the inmate is eligible for parole;
- (2) there is a reasonable probability that the inmate can be released without detriment to the community or to the inmate; and
- (3) the inmate is willing and capable of fulfilling the obligations of a law-abiding citizen.

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

(d) Notwithstanding subsection (a) or (e) of this section, or any other provision of law to the contrary, any inmate who is serving a sentence, including an inmate who has not yet served the minimum term of the sentence, who is diagnosed as having a terminal or serious medical condition so as to render the inmate unlikely to be physically capable of presenting a danger to society, may be released on medical parole to a hospital, hospice, other licensed inpatient facility, or suitable housing accommodation as specified by the Parole Board. Provided the inmate has authorized the release of his or her personal health information, the Department shall promptly notify the Parole Board upon receipt of medical information of an inmate's diagnosis of a terminal or serious medical condition. As used in this subsection, a "serious medical condition" does not mean a condition caused by noncompliance with a medical treatment plan.

(e)(1) The Department shall identify each inmate meeting the presumptive parole eligibility criteria in section 501a of this title and refer each eligible inmate to the Parole Board at least 60 days prior to the inmate's eligibility date.

(2) The Department shall recommend presumptive release for each eligible inmate unless it determines, based on clear and convincing evidence, that:

(A) there is a reasonable probability that the inmate cannot be released without detriment to the community; or

(B) the inmate is not willing and capable of fulfilling the obligations of a law-abiding citizen.

(3)(A) The Parole Board shall conduct an administrative review of each inmate the Department recommends for presumptive release within 30 days of the inmate's eligibility date. The Board may deny presumptive release and set a hearing if it determines, through its administrative review, that a victim or victims should be notified and given the opportunity to participate in a parole hearing.

(B) The Parole Board shall conduct a parole hearing pursuant to section 502 of this title for each eligible inmate that the Department determines is not appropriate for release based on the criteria in subdivision (2) of this subsection.

\* \* \* Furlough \* \* \*

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

§ 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

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

- (1) To visit a critically ill relative.
- (2) To attend the funeral of a relative.
- (3) To obtain medical services.
- (4) To contact prospective employers.
- (5) To secure a suitable residence for use upon discharge.

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

(b) An offender granted a temporary furlough pursuant to this section may be accompanied by an employee of the Department, in the discretion of the Commissioner, during the period of the offender's furlough. The Department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol

monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

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

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

(e) The Commissioner may place on medical furlough any offender who is serving a sentence, including an offender who has not yet served the minimum term of the sentence, who is diagnosed with a terminal or serious medical condition so as to render the offender unlikely to be physically capable of presenting a danger to society. The Commissioner shall develop a policy regarding the application for, standards for eligibility of, and supervision of

persons on medical furlough. The offender may be released to a hospital, hospice, other licensed inpatient facility, or other housing accommodation deemed suitable by the Commissioner. As used in this subsection, a “serious medical condition” does not mean a condition caused by noncompliance with a medical treatment plan.

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

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

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

§ 808a. TREATMENT FURLOUGH

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

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

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

~~low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

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

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

§ 723. ~~CONDITIONAL REENTRY~~ COMMUNITY SUPERVISION

FURLOUGH

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

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

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

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

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

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

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

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

COMMUNITY SUPERVISION FURLOUGH

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

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

(b) Any interruption of an offender's community supervision furlough after the Department has found a technical violation of furlough conditions shall trigger a Department Central Office case staffing review and Department notification to the Office of the Defender General if the interruption will exceed 30 days.

(c) An offender may seek review in the Civil Division of the Superior Court of the Department's decision to revoke furlough or interrupt furlough for 30 days or longer pursuant to Rule 75 of the Vermont Rules of Civil Procedure. The offender shall have the burden of proving by a preponderance of the evidence that the Department wrongfully violated the conditions of community supervision furlough or wrongfully imposed a furlough revocation or interrupt that exceeds 30 days.

(d) As used in this section, "technical violation" shall mean a violation of conditions of furlough that does not constitute a new crime.

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

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

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

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

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

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

§ 818. EARNED GOOD TIME; REDUCTION OF TERM

(a) On or before July 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned good time program to become effective on October 1, 2020. The Commissioner shall adopt these amendments as an emergency rule and concurrently propose them as a permanent rule. The emergency rule shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

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

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to section 811 of this title, or to offenders sentenced to life without parole.

(2) Offenders shall earn a reduction of ~~five~~ seven days in the minimum and maximum sentence for each ~~month~~ 30 days during which the offender:

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

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

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

(3) An offender who receives post-adjudication treatment in a residential setting for a substance use disorder shall earn a reduction of one day in the minimum and maximum sentence for each day that the offender receives the inpatient treatment. While a person is in residential substance abuse treatment,

he or she shall not be eligible for good time except as provided in this subsection.

(4) The Department shall provide timely notice ~~no~~ not less frequently than every 90 days to the offender and to any victim of record any time the offender receives a reduction in his or her term of supervision pursuant to this section, and the Department shall maintain a system that documents and records all such reductions in each offender's permanent record.

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

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

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

~~THE DISCRETION OF THE DEPARTMENT~~

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

\* \* \*

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 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

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

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

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

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

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

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

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

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

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

(d) As used in this section:

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

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

(3) [Repealed.]

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

Sec. 19. RACIAL DISPARITIES IN CRIMINAL JUSTICE SYSTEM;  
VERMONT SENTENCING COMMISSION; EXECUTIVE  
DIRECTOR OF RACIAL EQUITY; DEPARTMENT OF  
CORRECTIONS; REPORT

(a) During the 2020 legislative interim, the Chief Superior Judge, the Attorney General, the Defender General, the Department of Corrections, and the Executive Director of the Department of State’s Attorneys and Sheriffs shall work with Crime Research Group to identify existing data that explores the relationships between demographic factors and sentencing outcomes and

determine whether and where current data systems and collections are insufficient for additional analyses and what staffing or resources are needed to support more robust reporting. Relevant data shall include plea agreements, sentence types and length, criminal history, offense severity, and any other metric that may further identify differences in how people are charged and sentenced by county, race, and gender. Each stakeholder identified in this subsection shall report their findings to the Joint Legislative Justice Oversight Committee on or before October 1, 2020.

(b)(1) During the 2020 legislative interim, the Vermont Sentencing Commission shall:

(A) analyze sentencing patterns across the State to identify where the use and length of incarceration may result in or exacerbate racial disparities; and

(B) work with the Executive Director of Racial Equity and the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel in identifying the types of offenses for which there are racial and geographic disparities in sentencing and propose standardized sentencing guidance for those offenses.

(2) The Commission shall work with the Crime Research Group for the analyses pursuant to this section.

(3) On or before December 1, 2020, the Commission shall provide an interim report to the Joint Legislative Justice Oversight Committee with the results of its work pursuant to this subsection. On or before January 15, 2021, the Commission shall provide its final report on its work pursuant to this subsection to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions.

Sec. 20. DEPARTMENT OF CORRECTIONS PROGRAMMING

WORKING GROUP

(a) During the 2020 legislative interim, the Chief Superior Judge, the Defender General, the Department of Corrections, and the Executive Director of the Department of State's Attorneys and Sheriffs shall work with the Council of State Governments to:

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

(2) determine how to share information about risk assessments and available programming among each other to inform plea agreement, sentencing, and probation revocation decisions; and

(3) on or before January 15, 2021, report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions regarding suggested legislation to ensure sentencing, revocation,

and plea agreement decisions are informed by available programming and individual risk assessment information.

Sec. 21. REPEALS

28 V.S.A. § 808b (home confinement furlough) and 28 V.S.A. § 808c (reintegration furlough) are repealed on July 1, 2020.

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

Sec. 22. EFFECTIVE DATES

(a) This section and Secs. 16 (earned good time; reduction of term) and 21 (repeals) shall take effect on passage.

(b) Sec. 8 (presumptive parole) shall take effect on January 1, 2023.

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