

**Detailed summary of S.338, as passed by the Senate
February 21, 2020**

1. Allow for probationers to earn credit towards their minimum sentence while serving probation.

- Eliminates “indefinite probation” by establishing that all terms of probation be for a specific duration (*section 3, page 6, line 6*).
- Allows people on probation to earn one day off their minimum sentence for every day they serve on probation without violating the terms of probation, which would effectively allow people to have their time served on probation count towards their minimum sentence (*section 3, page 9, lines 11-19*).
- The earned time on probation would mean that if a person violates their conditions and is revoked to prison, the time they would have remaining to serve (i.e. their minimum sentence) would be reduced by the time they’ve earned on probation, and reflect the new remainder of their sentence (*section 4, page 10, lines 5-14*).

2. Expand parole eligibility and establish a system of presumptive parole.

- Establishes that a person who is 65 years or older, who is not serving a sentence of life without parole, has served five years in prison, has completed all programming requirements as determined by the Department of Corrections (DOC), and has not had a major disciplinary rule violation within the past 12 months will be eligible for parole consideration (*section 5, page 13, lines 1-5*).
- Establishes presumptive parole for people who are serving incarceration sentences for unlisted offenses (including people on furlough) once they reach their minimum sentence, so long as they meet key criteria around good behavior (no major disciplinary rule violations for 12 months, case plan compliant for the past 90 days, no new convictions or outstanding warrants), and based on their offense of conviction (*section 7, page 13, lines 8-21 and page 14, lines 1-12*).
 - o This presumption would become effective on January 1, 2021 (*section 22, page 35, line 12*).
- Establishes presumptive parole for people who are serving incarceration sentences for listed offenses- but not those that are part of “the Big 12”- once they reach their minimum sentence, so long as they meet the same criteria around good behavior while incarcerated or on furlough (*section 8, page 14, lines 15-21 through page 15, lines 1-19*).
 - o This presumption would become effective on January 1, 2023 (*section 22, page 35, line 11*).
- Establishes that the Parole Board will conduct an administrative review of all presumptive parole candidates (as referred by DOC) within 30 days of the person’s eligibility date (*section 10, page 19, lines 16-18*).
- Allows the Parole Board to deny presumptive release and set a hearing if the Board determines that a victim or victims should be notified and given the chance to participate in a hearing (*section 10, page 19, lines 18-21*).

3. Streamline the furlough system and create a review process for furlough revocations or interruptions.

- Reduces furlough to three types of statuses:
 - o Temporary Furlough reclassifies those furlough statuses that allow for temporary release from incarceration for such reasons as visiting an ill relative, attending a

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funeral service of a relative, obtaining medical services, contacting prospective employers, or securing suitable residence upon their release (*section 11, page 20, lines 7-21 through page 22, lines 1-21*).

- Treatment Furlough which remains largely the same but with two types of under-used treatment furlough statuses repealed (*see below*).
- Community Supervision Furlough repurposes a current furlough status (named Conditional Reentry) to the primary release mechanism for people who have reached their minimum sentence and are not eligible for presumptive parole, at the discretion of DOC (*section 13, page 24, lines 7-22 through page 25, lines 1-21*).
- Establishes more due process in furlough violation hearings by requiring that any recommendation for a furlough interrupt of 30 days or longer in prison trigger DOC Central Office review and notification of the interrupt recommendation to the Defender General's office (*section 14, page 26, lines 2-15*).
 - Provides that the DOC's decision to revoke furlough or interrupt furlough for 30 days or longer in prison will be pursuant to Rule 75 of the Vermont Rules of Civil Procedure, such that the individual may challenge the revocation or interrupt decision if they are able to prove that the DOC wrongfully violated the conditions of community supervision furlough or wrongfully imposed a revocation or interrupt (*section 14, page 26, lines 16-22*).
- Repeals under-utilized or counter-productive furlough statuses, including reintegration furlough (*section 11, page 20, lines 18-21 and page 21 lines 1-2*), furlough without approved housing (*section 11, page 22, lines 13-19*), treatment furlough for low risk people (*section 12, page 24, lines 3-10*), and treatment furlough for people convicted of specific driving while under the influence offenses (*section 12, page 24, lines 11-15*).

4. Increase the number of days per month an incarcerated person can earn good time.

- Revises the "earned good time" bill passed in 2019 such that a person may earn 7 days off their minimum sentence for every 30 days they are incarcerated (or on furlough) without a major disciplinary rule violation (*section 16, page 28, lines 10-16*) and removes the requirement that a person participate in DOC recommended programming to earn time off their minimum sentence (*section 16, page 28, lines 17-20*).
- Establishes that this law will be subject to an emergency rule making process such that the law becomes effective on October 1, 2020 (*section 16, page 27, lines 21-22 and page 28, lines 1-2*).

5. Require reports related to demographics and sentencing, and on strategies to ensure sentencing decisions are informed by risk assessments and available programming.

- Requires the Chief Superior Judge, the Attorney General, the Defender General, the DOC, and the Executive Director of the Department of State's Attorneys and Sheriffs to work with the Crime Research Group (CRG) to identify existing data and gaps in data related to demographic factors and sentencing outcomes, as well as what additional data resources and staffing would be necessary to fill these gaps in data and information, and report back on findings by October 1, 2020 (*section 19, page 31, lines 6-10 and page 32 lines 1-8*).

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- Directs the Sentencing Commission to work with the Executive Director of Racial Equity and the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel to identify the types of offenses where racial disparities exist or are exacerbated, and report back by December 1, 2020 with an interim report and by January 15, 2021 with a final report (*section 19, page 32, lines 9-21 and page 33, lines 1-5*).
- Directs the Chief Superior Judge, the Attorney General, the Defender General, the DOC, and the Executive Director of the Department of State's Attorneys and Sheriffs to work with the Council of State Governments (CSG) to identify tools that can provide more information regarding a person's criminogenic risk, as well as programming needs and eligibility pre-sentencing to inform conditions of supervision, and report back by January 15, 2021 (*section 20, page 33, lines 8-22*).

6. Provides sentencing options for escapes and attempts to escape from DOC custody.

- Escapes or attempts to escape from correctional facilities can be punishable by up to 10 years of incarceration or fines of up to \$5,000, or both (*page 30, section 18a*).
- Escapes or attempts to escape from an officer for people in custody for a felony can be punishable by up to 10 years of incarceration or fines of up to \$5,000, or both; for people in custody for a misdemeanor, escapes or attempts to escape from an officer can be punishable by up to two years of incarceration or fines of up to \$1,000, or both. (*page 30, section 18a*).
- For failures to return to a correctional facility from work release, furlough, or eloping or attempting eloping from the Vermont Psychiatric Care hospital or a participating hospital when confined by the court or transferred from DOC custody can be punishable for up to five years or fines of up to \$1,000, or both (*page 30, section 18a*).
- Specifies all sentences imposed in section 18a shall be consecutive (*page 30, section 18a*).
- Clarifies that if a person is on furlough, a violation for an escape or attempted escape requires showing that the person intended to escape from furlough (*page 30, section 18a*).