

1 S.338

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Criminal procedure; corrections policy; diversion; pretrial services;
5 probation and parole; furlough

6 Statement of purpose of bill as introduced: This bill proposes to reform the
7 State's approach to criminal justice by reducing the population of incarcerated
8 Vermonters and reinvesting the savings in strategies to improve public safety,
9 reduce recidivism and revocations to prison, and support individual success
10 on supervision, including: 1) allowing for probationers to earn credit towards
11 their minimum sentence while serving probation; 2) expanding parole
12 eligibility criteria and establishing a system of presumptive parole;
13 3) streamlining the furlough system and creating a review process for
14 furlough revocations or interruptions; 4) increasing the number of days per
15 month an incarcerated offender can earn good time; and 5) requiring a report
16 on the relationships between demographic factors and sentencing outcomes
17 and a report on strategies to ensure sentencing decisions are informed by
18 individual risk assessment information and available programming.

19 An act relating to justice reinvestment

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

2 Sec. 1. FINDINGS AND PURPOSE

3 (a) The General Assembly finds:

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

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

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

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

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

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

1 and the minimum term shall be not less than the shortest term fixed by law for
2 the offense. If the court suspends a portion of the sentence, the unsuspended
3 portion of the sentence shall be the minimum term of sentence solely for the
4 purpose of any reductions of term for good behavior as set forth in 28 V.S.A.
5 § 811. A sentence shall not be considered fixed as long as the maximum and
6 minimum terms are not identical.

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

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

18 (2) In sentencing a violation of probation, the court shall give the person
19 credit for any days spent in custody from the time the violation is filed or the
20 person is detained on the violation, whichever occurs first, until the violation is
21 sentenced. In a case in which probation is revoked and the person is ordered to

1 serve the underlying sentence, the person shall receive credit for all time
2 previously served in connection with the offense and all time served on
3 probation prior to the time the violation is filed.

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

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

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

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

18 § 205. PROBATION

19 (a)(1) After passing sentence, a court may suspend all or part of the
20 sentence and place the person so sentenced in the care and custody of the
21 Commissioner upon such conditions and for such time as it may prescribe in

1 accordance with law or until further order of court. All terms of probation set
2 by the court shall be for a specific duration, not to exceed the statutory
3 maximum term of imprisonment for the offense.

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

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

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

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

15 (ii) an offense involving sexual exploitation of children in
16 violation of 13 V.S.A. chapter 64.

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

20 (5) The probation officer of a person on probation for a specific term
21 shall review the person’s case file during probation and, not less than 45 days

1 prior to the expiration of the probation term, may file a petition with the court
2 requesting the court to extend the period of probation for a specific term not to
3 exceed one year in order to provide the person the opportunity to complete
4 programming consistent with special conditions of probation. A hearing on the
5 petition for an extension of probation under this subsection shall comply with
6 the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal
7 Procedure.

8 (b) The victim of a listed crime as defined in 13 V.S.A. § 5301(7) for
9 which the offender has been placed on probation shall have the right to request
10 and receive from the Department of Corrections information regarding the
11 offender's general compliance with the specific conditions of probation.

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

15 (c)(1) Unless the court in its discretion finds that the interests of justice
16 require additional standard and special conditions of probation, when the court
17 orders a specific term of probation for a qualifying offense, the offender shall
18 be placed on administrative probation, which means that the only conditions of
19 probation shall be that the probationer:

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

1 (B) notify the probation officer of his or her current address each
2 month;

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

5 (D) not be convicted of a criminal offense during the term of
6 probation.

7 (2) As used in this subsection, “qualifying offense” means:

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

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

10 (C) Operating after suspension or revocation of license under
11 23 V.S.A. § 674(a).

12 (D) Bad checks under 13 V.S.A. § 2022.

13 (E) Theft of services under 13 V.S.A. § 2582.

14 (F) Disorderly conduct under 13 V.S.A. § 1026, unless the original
15 charge was a listed offense as defined in 13 V.S.A. § 5301(7).

16 (G) Theft of rented property under 13 V.S.A. § 2591.

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

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

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

20 § 1091(a).

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

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

2 (M) [Repealed.]

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

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

5 § 5301(7).

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

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

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

11 (d)(1) A probationer shall receive one day of credit towards the
12 probationer's minimum sentence for each day served on probation. The
13 probationer shall cease accruing credit towards the minimum sentence the day
14 an arrest warrant for the probationer is filed. If the court finds that the
15 probationer violated the terms of probation and returns the person to probation,
16 the court shall determine whether the person may again accrue credit towards
17 the minimum sentence and when the accrual shall commence. If the court
18 finds no violation occurred, there shall be no interruption in the probationer's
19 accrual of credit.

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

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

5 § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF
6 PROBATION

7 (a) Revocation and imposition of sentence.

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

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

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

20 (1) continue the probationer on the existing sentence;

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

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

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

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

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

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

17 (e) Rules. The Department of Corrections shall adopt rules pursuant to
18 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation
19 violations as an alternative to revocation and imposition of the remainder of
20 the original sentence. These guidelines do not grant the Department any
21 authority to impose sanctions for probation violations.

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

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

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

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

13 § 501a. PRESUMPTIVE PAROLE

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

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

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

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

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

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

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

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

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

16 (7) is not serving a sentence for committing a crime specified in
17 13 V.S.A. § 5301.

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

19 § 501a. PRESUMPTIVE PAROLE

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

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

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

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

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

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

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

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

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

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

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

2 ~~13 V.S.A. § 5301~~ 33 V.S.A. § 5204(a).

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

4 § 502. PAROLE INTERVIEWS AND REVIEWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 § 502a. RELEASE ON PAROLE

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

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

10 (1) the inmate is eligible for parole;

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

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

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

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

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

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

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

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

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

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

7 (B) The Parole Board shall conduct a parole hearing pursuant to section
8 502 of this title for each eligible inmate that the Department determines is not
9 appropriate for release based on the criteria in subdivision (2) of this
10 subsection.

11 * * * Furlough * * *

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

13 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

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

19 (1) To visit a critically ill relative.

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

21 (3) To obtain medical services.

1 (4) To contact prospective employers.

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

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

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

16 (c) The extension of the limits of the place of confinement authorized by
17 this section shall in no way be interpreted as a probation or parole of the
18 offender, but shall constitute solely a permitted extension of the limits of the
19 place of confinement for offenders committed to the custody of the
20 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 is first obtained, the
16 Department may place on treatment furlough an offender who has not yet
17 served the minimum term of the sentence, who, in the Department's
18 determination, needs residential treatment services not available in a
19 correctional facility. The services may include treatment for substance abuse
20 or personal violence or any other condition that the Department has determined
21 should be addressed in order to reduce the offender's risk to reoffend or cause

1 harm to himself or herself or to others in the facility. The offender shall be
2 released only to a hospital or residential treatment facility that provides
3 services to the general population. The State's share of the cost of placement
4 in such a facility, net of any private or federal participation, shall be paid
5 pursuant to memoranda of agreement between and within State agencies
6 reflective of their shared responsibilities to maximize the efficient and
7 effective use of State resources. In the event that a memorandum of agreement
8 cannot be reached, the Secretary of Administration shall make a final
9 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 presumptive parole pursuant to section 501a of this
14 title or has been returned or revoked to prison for a violation of conditions of
15 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) The Department shall identify in the terms and conditions of ~~conditional~~
15 ~~reentry~~ community supervision furlough those programs necessary to reduce
16 the offender's risk of reoffense and to promote the offender's accountability
17 for progress in the reintegration process. The Department shall make all
18 determinations of violations of conditions of community supervision furlough
19 pursuant to this subchapter and any resulting alternative sentence or
20 termination of community supervision furlough status.

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

6 (c) An offender may seek review in the Civil Division of the Superior
7 Court of the Department’s decision to revoke furlough or interrupt furlough for
8 30 days or longer pursuant to Rule 75 of the Vermont Rules of Civil
9 Procedure. The offender shall have the burden of proving by a preponderance
10 of the evidence that the Department wrongfully violated the conditions of
11 community supervision furlough or wrongfully imposed a furlough revocation
12 or interrupt that exceeds 30 days.

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

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

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

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

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

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

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

10 § 818. EARNED GOOD TIME; REDUCTION OF TERM

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

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

19 (1) The program shall be available for all sentenced offenders, including
20 furloughed offenders, provided that the program shall not be available to
21 offenders on probation or parole, to offenders eligible for a reduction of term

1 pursuant to section 811 of this title, or to offenders sentenced to life without
2 parole.

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

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

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

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

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

20 (4) The Department shall provide timely notice ~~no~~ not less frequently
21 than every 90 days to the offender and to any victim of record any time the

1 offender receives a reduction in his or her term of supervision pursuant to this
2 section, and the Department shall maintain a system that documents and
3 records all such reductions in each offender's permanent record.

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

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

7 § 808d. DEFINITION; ELIGIBLE MISDEMEANOR; ~~FURLOUGH AT~~
8 ~~THE DISCRETION OF THE DEPARTMENT~~

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

12 * * *

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

14 § 808e. ABSCONDING FROM FURLOUGH; WARRANT

15 (a) The Commissioner of Corrections may issue a warrant for the arrest of
16 a person who has absconded from furlough status in violation of ~~subdivision~~
17 subsection 808(a)(6), subsection 808(e) or 808(f), or section 808a, 808b, or
18 808c of this title, requiring the person to be returned to a correctional facility.
19 A law enforcement officer who is provided with a warrant issued pursuant to
20 this section shall execute the warrant and return the person who has absconded
21 from furlough to the Department of Corrections.

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

4 * * * Reports to General Assembly * * *

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

9 **(a)** During the 2020 legislative interim, the Chief Superior Judge, the
10 Attorney General, the Defender General, the Department of Corrections, and
11 the Executive Director of the Department of State's Attorneys and Sheriffs
12 shall work with Crime Research Group to identify existing data that explores
13 the relationships between demographic factors and sentencing outcomes and
14 determine whether and where current data systems and collections are
15 insufficient for additional analyses and what staffing or resources are needed to
16 support more robust reporting. Relevant data shall include plea agreements,
17 sentence types and length, criminal history, offense severity, and any other
18 metric that may further identify differences in how people are charged and
19 sentenced by county, race, and gender. Each stakeholder identified in this
20 subsection shall report their findings to the Joint Legislative Justice Oversight
21 Committee on or before October 1, 2020.

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

2 Commission shall:

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

5 and

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

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

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

1 Sec. 20. DEPARTMENT OF CORRECTIONS PROGRAMMING

2 WORKING GROUP

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

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

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

13 (3) on or before January 15, 2021, report to the House and Senate
14 Committees on Judiciary and the House Committee on Corrections and
15 Institutions regarding suggested legislation to ensure sentencing, revocation,
16 and plea agreement decisions are informed by available programming and
17 individual risk assessment information.

1 * * * Appropriation, Repeals, and Effective Dates * * *

2 Sec. 21. JUSTICE REINVESTMENT II APPROPRIATION

3 (a) In FY20, \$2,000,000.00 is appropriated from the General Fund to the
4 Agency of Human Services to fund Justice Reinvestment II investments as
5 follows:

6 (1) \$400,000.00 is reserved for risk-based domestic violence
7 intervention programming available in communities that are certified by the
8 Vermont Council on Domestic Violence, and statewide coordination of those
9 efforts through the Vermont Council on Domestic Violence. On or before
10 January 15, 2021, the Vermont Network against Domestic and Sexual
11 Violence will provide an interim report to the House and Senate Committees
12 on Judiciary and the House Committee on Corrections and Institutions on
13 progress related to outcome indicators for domestic violence accountability
14 programming. On or before January 15, 2022, the Network shall provide a
15 final report to the same committees.

16 (2) \$1,000,000.00 is reserved for additional evidence-based transitional
17 housing programming.

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

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

5 Sec. 22. REPEALS

6 28 V.S.A. § 808b (home confinement furlough) and 28 V.S.A. § 808c
7 (reintegration furlough) are repealed on July 1, 2020.

8 * * * Effective Dates * * *

9 Sec. 23. EFFECTIVE DATES

10 (a) This section and Secs. 16 (earned good time; reduction of term),
11 21 (appropriation), and 22 (repeals) shall take effect on passage.
12 (b) Sec. 8 (presumptive parole) shall take effect on January 1, 2023.
13 (c) All other sections shall take effect on January 1, 2021.