

1 Introduced by Committee on Judiciary

2 Date:

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

5 Statement of purpose of bill as introduced: This bill proposes to reform the
6 State’s approach to criminal justice by reducing the population of incarcerated
7 Vermonters and reinvesting the savings in strategies to improve public safety,
8 with the goals of: reducing recidivism and revocations to prison, supporting
9 individual success on supervision, achieving a more equitable justice system
10 across race and geography, and improving data and reporting to inform
11 decision-making.

12 An act relating to justice reinvestment

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

14 **Sec. 1. FINDINGS AND PURPOSE**

15 **(a) The General Assembly finds:**

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

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

4 **(b)** The purpose of this act is to improve public safety in Vermont, while
5 focusing on immediate opportunities to reduce recidivism and achieve long-
6 term savings by shifting the sentenced population trajectory and reducing
7 contract bed needs significantly.

8 * * * Compassionate Release * * *

9 Sec. 2. 13 V.S.A. chapter 221, subchapter 5 is added to read:

10 Subchapter 5. Petition for Compassionate Release

11 § 7141. PETITION

12 An inmate who is serving a sentence of incarceration in the custody of the
13 Commissioner of Corrections may petition the Superior Court of the county where
14 the sentence was imposed for an order granting compassionate release. The
15 petition may be informal, but shall be in writing, and shall include the inmate's
16 name, offense, date of sentencing, sentence, and an explanation of why
17 compassionate release is appropriate for the inmate and how the inmate satisfies
18 the factors set forth in section 7142 of this subchapter. The inmate shall serve a
19 copy of his or her petition upon the superintendent of the facility in which he or
20 she is incarcerated.

21 § 7142. NOTICE, HEARING, AND DECISION

1 (a) Unless the petition and the files and records of the case conclusively show
2 that the inmate is not entitled to relief, the court shall cause notice to be served
3 upon the Office of the Attorney General and the State's Attorney. The Office of
4 the Attorney General and a State's Attorney who receive notice may elect to
5 appear as parties.

6 (b) The court may decide the petition upon the files and records of the case or
7 may grant a hearing. If the court grants a hearing, the court may entertain and
8 decide the petition without requiring the inmate to attend the hearing.

9 (c) The court shall grant the petition if it finds by a preponderance of the
10 evidence that:

11 (1) the inmate:

12 (A) has been diagnosed with a terminal, incurable disease and has a life
13 expectancy of 18 months or less; or

14 (B) has been diagnosed with an incurable and progressive illness or has
15 suffered a debilitating injury; and:

16 (i) cannot care for himself or herself and is confined to a bed or chair;

17 or

18 (ii) can only care for himself or herself on a limited basis and is
19 confined to a bed or chair for at least 50 percent of his or her waking hours; or

20 (C) is 65 years of age or older; and:

21 (i) suffers from a chronic or serious medical condition; or

- 1 (ii) is experiencing deteriorating mental or physical health that
2 diminishes his or her ability to function in a correctional facility;
- 3 (2) the inmate is not a danger to the community and his or her release will
4 not endanger public safety; and
- 5 (3) compassionate release is appropriate.
- 6 (d) If the court grants the petition, it may reduce the term of imprisonment and
7 may impose a term of probation or supervised release with or without conditions
8 that does not exceed the original term of imprisonment.

9 § 7143. APPEALS

10 An appeal may be taken to the Supreme Court from the order entered on the
11 petition.

12 § 7144. ASSIGNMENT OF COUNSEL

13 The court may appoint counsel if, financially, the inmate is unable to employ
14 counsel, and may order that all necessary costs and expenses, including court
15 costs, stenographic services, printing, and reasonable compensation for legal
16 services, be paid by the State from the appropriation to the court where the
17 sentence was imposed. On appeal, the Supreme Court may make a similar order.

18 * * * Probation * * *

19 Sec. 3. 13 V.S.A. § 7031 is amended to read:

20 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

21 (a) When a respondent is sentenced to any term of imprisonment, other
22 than for life, the court imposing the sentence shall not fix the term of

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

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

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

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

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

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

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

1 Sec. 4. 28 V.S.A. § 205 is amended to read:

2 § 205. PROBATION

3 (a)(1) After passing sentence, a court may suspend all or part of the
4 sentence and place the person so sentenced in the care and custody of the
5 Commissioner upon such conditions and for such time as it may prescribe in
6 accordance with law or until further order of court.

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

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

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

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

18 (ii) an offense involving sexual exploitation of children in

19 violation of 13 V.S.A. chapter 64.

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

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

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

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

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

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

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

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

10 (D) not be convicted of a criminal offense during the term of
11 probation.

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

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

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

15 (C) Operating after suspension or revocation of license under
16 23 V.S.A. § 674(a).

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

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

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

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

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

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

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

4 § 1091(a).

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

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

7 (M) [Repealed.]

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

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

10 § 5301(7).

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

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

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

16 (d) The court shall reduce the term of the suspended sentence one day for
17 each day the person serves on probation without violating one more conditions
18 of the probation.

1 Sec. 5. 28 V.S.A. § 304 is amended to read:

2 § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF
3 PROBATION

4 (a) Revocation and imposition of sentence.

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

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

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

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

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

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

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

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

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

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

15 (e) Rules. The Department of Corrections shall adopt rules pursuant to
16 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation
17 violations as an alternative to revocation and imposition of the remainder of
18 the original sentence. These guidelines do not grant the Department any
19 authority to impose sanctions for probation violations.

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* * * Parole * * *

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

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION; PRESUMPTIVE PAROLE

(a) Parole eligibility. ~~An inmate~~ A person who is serving a sentence of imprisonment who is not eligible for presumptive parole pursuant to subsection

(b) of this section shall be eligible for parole consideration as follows:

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

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

7 (3) If the inmate has a serious medical condition that requires regular
8 hospital visits and the inmate is designated low-risk, the inmate shall be
9 eligible for parole.

10 **(b) Presumptive parole.**

11 (1) A person who is serving a sentence of imprisonment shall be eligible
12 for presumptive release in accordance with subsection 502a(e) of this title at
13 the expiration of the person's minimum or aggregate minimum term of
14 imprisonment if the person:

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

17 (B) has no outstanding warrants, detainers, commitments, or pending
18 charges for a violation of a listed crime pursuant to 13 V.S.A. § 5301;

19 (C) is compliant with the person's case plan during the period of
20 incarceration if the person is incarcerated for less than 90 days or is compliant

1 for the 90 days preceding the completion of the person's minimum term if the
2 person is incarcerated for 90 days or more;

3 (D) if the person is supervised in the community, the person is
4 compliant with the conditions of the person's supervision during the period of
5 supervision if the person is supervised for less than 90 days or is compliant for
6 the 90 days preceding the completion of the person's minimum term if the
7 person is supervised for 90 days or more;

8 (E) has no major disciplinary convictions or pending infractions
9 during the period of incarceration if the person is incarcerated for less than 12
10 months, or has no major disciplinary convictions or pending infractions during
11 the preceding 12 months if the person is incarcerated for 12 months or more;

12 (F) has not had parole revoked on the person's current sentence; and

13 (G) is not serving a sentence for committing a crime specified in 33
14 V.S.A. § 5204(a).

15 (2) If the inmate is 55 years of age or older but under 65 years of age, is
16 designated low-risk, and has served 10 years but not served the minimum of the
17 sentence, the inmate shall be eligible for presumptive release in accordance with
18 subsection 502a(e) of this title unless the inmate has programming requirements
19 that have not been fulfilled or has received a major disciplinary conviction within
20 the previous 12 months.

21 (5) If the inmate is 65 years of age or older, has served five years but not
22 served the minimum term of the sentence, and is designated low-risk, the inmate

1 shall be eligible for presumptive release in accordance with subsection 502a(e)
2 of this title unless the inmate has programming requirements that have not been
3 fulfilled or has received a major disciplinary conviction within the previous
4 12 months.

5 Sec. 8. 28 V.S.A. § 502 is amended to read:

6 § 502. PAROLE INTERVIEWS AND REVIEWS

7 (a) The Board shall interview each inmate eligible for parole consideration
8 under section 501 of this title before ordering the inmate released on parole.

9 The Board shall consider all pertinent information regarding an inmate in order
10 to determine the inmate's eligibility for parole. The Board may grant parole
11 only after an inmate is interviewed in accordance with this section. The Parole
12 Board may conduct the interview in person, by telephone or videoconference,
13 or by any other method it deems appropriate.

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

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

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

21 (A) the Board shall review the inmate's record once every 12
22 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. 9. 28 V.S.A. § 502a is amended to read:

2 § 502a. RELEASE ON PAROLE

3 (a) No inmate serving a sentence with a minimum term shall be released on
4 parole until the inmate has served the minimum term of the sentence, less any
5 reductions for good behavior.

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

9 (1) the inmate is eligible for parole;

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

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

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

18 (d) Notwithstanding subsection (a) or (e) of this section, or any other
19 provision of law to the contrary, any inmate who is serving a sentence,
20 including an inmate who has not yet served the minimum term of the sentence,
21 who is diagnosed as having a terminal or serious medical condition so as to

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

10 (e)(1) The Department shall refer to the Parole Board an inmate eligible for
11 presumptive parole under subsection 501(b) of this title unless the Department
12 determines:

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

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

17 (2) The inmate shall be released on parole by the written order of the
18 Parole Board [unless the Board determines the inmate meets one of the criteria
19 identified in subdivision (1) of this subsection].

20 * * * Furlough * * *

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

1 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

2 (a) The Department may extend the limits of the place of confinement of an
3 offender at any correctional facility if the offender agrees to comply with such
4 conditions of supervision the Department, in its sole discretion, deems
5 appropriate for that offender's furlough. The Department may authorize a
6 temporary furlough for a defined period up to 10 days for any of the following
7 reasons:

- 8 (1) To visit a critically ill relative.
9 (2) To attend the funeral of a relative.
10 (3) To obtain medical services.
11 (4) To contact prospective employers.
12 (5) To secure a suitable residence for use upon discharge.
13 ~~(6) To continue the process of reintegration initiated in a correctional~~
14 ~~facility. The offender may be placed in a program of conditional reentry status~~
15 ~~by the Department upon the offender's completion of the minimum term of~~
16 ~~sentence. While on conditional reentry status, the offender shall be required to~~
17 ~~participate in programs and activities that hold the offender accountable to~~
18 ~~victims and the community pursuant to section 2a of this title.~~

19 (b) An offender granted a temporary furlough pursuant to this section may
20 be accompanied by an employee of the Department, in the discretion of the
21 Commissioner, during the period of the offender's furlough. The Department

1 may use electronic monitoring equipment such as global position monitoring,
2 automated voice recognition telephone equipment, and transdermal alcohol
3 monitoring equipment to enable more effective or efficient supervision of
4 individuals placed on furlough.

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

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

18 ~~(e) The Commissioner may place on medical furlough any offender who is~~
19 ~~servng a sentence, including an offender who has not yet served the minimum~~
20 ~~term of the sentence, who is diagnosed with a terminal or serious medical~~
21 ~~condition so as to render the offender unlikely to be physically capable of~~

1 ~~presenting a danger to society. The Commissioner shall develop a policy~~
2 ~~regarding the application for, standards for eligibility of, and supervision of~~
3 ~~persons on medical furlough. The offender may be released to a hospital,~~
4 ~~hospice, other licensed inpatient facility, or other housing accommodation~~
5 ~~deemed suitable by the Commissioner. As used in this subsection, a “serious~~
6 ~~medical condition” does not mean a condition caused by noncompliance with a~~
7 ~~medical treatment plan. [Repealed.]~~

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

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

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

18 § 808a. TREATMENT FURLOUGH

19 (a) An offender may be sentenced to serve a term of imprisonment, but
20 placed by a court on treatment furlough to participate in such programs
21 administered by the Department in the community that reduce the offender’s

1 risk to reoffend or that provide reparation to the community in the form of
2 supervised work activities.

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

19 ~~(c)(1) Except as provided in subdivision (2) of this subsection, the~~
20 ~~Department, in its own discretion, may place on treatment furlough an offender~~
21 ~~who has not yet served the minimum term of his or her sentence for an eligible~~

1 ~~misdemeanor as defined in section 808d of this title if the Department has~~
2 ~~made a determination based upon a risk assessment that the offender poses a~~
3 ~~low risk to public safety or victim safety and that employing an alternative to~~
4 ~~incarceration to hold the offender accountable is likely to reduce the risk of~~
5 ~~recidivism.~~

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

11 Sec. 12. 28 V.S.A. § 723 is amended to read:

12 § 723. ~~CONDITIONAL REENTRY~~ COMMUNITY SUPERVISION
13 FURLOUGH

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

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

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

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

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

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

1 Sec. 13. 28 V.S.A. § 724 is amended to read:

2 § 724. TERMS AND CONDITIONS OF ~~CONDITIONAL REENTRY~~
3 COMMUNITY SUPERVISION FURLOUGH

4 The Department shall identify in the terms and conditions of ~~conditional~~
5 ~~reentry~~ community supervision furlough those programs necessary to reduce
6 the offender's risk of reoffense and to promote the offender's accountability
7 for progress in the reintegration process. The Department and one member of
8 the Parole Board shall make all determinations of violations of conditions of
9 community supervision furlough pursuant to this subchapter and any resulting
10 alternative sentence or termination of supervised community release status.

11 Sec. 14. 28 V.S.A. § 725 is amended to read:

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

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

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

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

5 (b) The Department shall set conditions to be reviewed by the Parole Board
6 for any offender eligible for presumptive parole pursuant to this section. The
7 Parole Board shall review the conditions within:

8 (1) 90 days of the beginning of the term of parole for an offender whose
9 parole term is set at 6 months or more; or

10 (2) ten days of the beginning of the term of parole for an offender whose
11 parole term is set at less than 6 months.

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

13 § 818. EARNED GOOD TIME; REDUCTION OF TERM

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

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

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

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

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

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

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

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

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

3 (4) The Department shall provide timely notice no less frequently than
4 every 90 days to the offender and to any victim of record any time the offender
5 receives a reduction in his or her term of supervision pursuant to this section,
6 and the Department shall maintain a system that documents and records all
7 such reductions in each offender’s permanent record.

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

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

11 § 808c. REINTEGRATION FURLOUGH

12 * * *

13 (g) While on reintegration furlough status, an offender shall be required to
14 participate in programs and activities that hold the offender accountable to
15 victims and the community pursuant to section 2a of this title.

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

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

18 ~~THE DISCRETION OF THE DEPARTMENT~~

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

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

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

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

* * * 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)(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

1 (B) work with the Executive Director of Racial Equity and the Racial
2 Equity Advisory Panel in identifying the types of offenses for which there are
3 racial and geographic disparities in sentencing and propose standardized
4 sentencing guidance for those offenses.

5 (2) On or before December 1, 2020, the Commission shall report to the
6 Joint Legislative Justice Oversight Committee with the results of its work
7 pursuant to this section.

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

1 Sec. 20. DEPARTMENT OF CORRECTIONS; GRADUATED
2 SANCTIONS; REENTRY HOUSING; REPORT

3 During the 2020 legislative interim, the Department of Corrections shall
4 review and strengthen existing graduated sanctions and incentives policies to
5 ensure they reflect current research on best practices for responses to violation
6 behavior that most effectively achieve behavior change and uphold public
7 safety. The Department shall also identify reentry housing needs for
8 corrections populations. As a part of this work, the Department shall:

9 (1) Formalize the use of incentives and sanctions in supervision
10 practices at a 4:1 ratio and require incentives to be entered and tracked in the
11 community supervision case management system.

12 (2) Analyze how supervision staff currently understand, implement, and
13 input data regarding the Department’s graduated sanctions policy to identify
14 where practices differ across the State. Where necessary, provide additional
15 staff training on the use and tracking of graduated sanctions.

16 (3) Develop and implement a homeless screening tool for use when a
17 person is booked into or released from Department facilities, and track reports
18 of homelessness among corrections populations in the Department’s case
19 management system.

20 (4) Identify and quantify high utilizers of corrections, homeless, and
21 behavioral health services; inform statewide permanent supportive housing

1 planning; and establish data match partnerships with appropriate Agency of
2 Human Services departments to match Department of Corrections, homeless
3 management system information (HMIS), and Medicaid information.

4 (5) Explore establishing a collaborative approach for the Department,
5 the Department of Mental Health, and the Vermont Department of Health to
6 contract with housing providers to coordinate responses for shared clients and
7 identify how the State can better leverage local and federal housing vouchers.

8 (6) Explore how the Department’s contractors could leverage federal
9 Medicaid funding or other funding to allow the Department’s contractors’
10 clients to stay in supportive housing after they are no longer under the
11 supervision of the Department.

12 (7) Reduce barriers to recovery housing by establishing evidence-based
13 norms and expectations for contracts and certifications for sober and recovery
14 housing providers, including allowing for the use of medications and
15 restricting evictions due to relapse.

16 (8) Explore opportunities to redefine housing requirements for
17 incarcerated persons in order to receive approval for furlough release.

18 (9) On or before November 15, 2020, report to the Joint Legislative
19 Justice Oversight Committee on:

20 (A) the Department’s plan to reduce its use of short-term
21 incarceration sanctions for people on furlough, the reduction in numbers of

1 short-term incarceration sanctions imposed, and the reduction in numbers of
2 graduated sanctions imposed;

3 (B) the results of the Department’s work pursuant to subdivisions
4 (3)–(8) of this section.

5 Sec. 21. JUSTICE REINVESTMENT II APPROPRIATION

6 (a) In FY20, \$2,000,000 is appropriated from the General Fund to the
7 Agency of Human Services to fund Justice Reinvestment II investments which
8 include workforce development, housing, community supports, and reentry
9 programming for offenders transitioning back into the community.

10 (b) The General Assembly intends that this appropriation of onetime funds
11 is to immediately invest funds to reduce recidivism and increase public safety,
12 and for savings achieved in FY20 and FY21 as a result of the legislative action
13 taken in this act to be used to fund these investments in FY22 and the future.

14 Sec. 22. REPEAL

15 28 V.S.A. § 808b (home confinement furlough) is repealed on July 1, 2020.

16 Sec. 23. EFFECTIVE DATE

17 This act shall take effect on July 1, 2020.