

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

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

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

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

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

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

18 (b) The purpose of this act is to:

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

1 § 7142. NOTICE, HEARING, AND DECISION

2 (a) Unless the petition and the files and records of the case conclusively show
3 that the inmate is not entitled to relief, the court shall cause notice to be served
4 upon the Office of the Attorney General and the State’s Attorney. The State’s
5 Attorney or Attorney General shall give written notice of a petition under section
6 7141 of this title to any victim associated with the offense for which the petitioner
7 is incarcerated. If the victim's current address is not known, the State's Attorney
8 or the Attorney General shall consult with the Department of Corrections Victim
9 Services Division to verify the victim's last known address. The notice shall be by
10 any reasonable means to the victim's last known address. Upon the victim's
11 request, the State's Attorney or Attorney General shall give the victim notice of the
12 time and place of any hearing on the petition and shall inform the victim of the
13 disposition of the petition and the outcome of any hearing.

14 (b) The court may decide the petition upon the files and records of the case or
15 may grant a hearing. If the court grants a hearing, the [Attorney General or State’s
16 Attorney] OR [the Department of Corrections] shall appear for the State, and the
17 court may entertain and decide the petition without requiring the inmate to attend
18 the hearing.

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

21 (1) the inmate:

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

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

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

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

9 (C) suffers from a chronic or serious medical condition and is
10 experiencing deteriorating mental or physical health that diminishes his or her
11 ability to function in a correctional facility;

12 (2) the inmate is not a danger to the community and his or her release will
13 not endanger public safety;

14 (3) compassionate release is appropriate; and

15 (4) there is appropriate placement and supports available for the inmate in
16 the community.

17 (d) If the court grants the petition, it may impose a term of probation or
18 supervised release with or without conditions that does not exceed the original
19 term of imprisonment.

20 § 7143. APPEALS

21 An appeal may be taken to the Supreme Court from the order entered on the
22 petition.

1 § 7144. ASSIGNMENT OF COUNSEL

2 The court may appoint counsel if the petitioner is unable financially to
3 employ counsel, and may order that all necessary costs and expenses incident
4 to the matter be paid by the State from the appropriation to the court where the
5 sentence was imposed. On appeal, the Supreme Court may make a similar
6 order.

7 * * * Probation * * *

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

9 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

10 (a) When a respondent is sentenced to any term of imprisonment, other
11 than for life, the court imposing the sentence shall not fix the term of
12 imprisonment, unless the term is definitely fixed by statute, but shall establish
13 a maximum and may establish a minimum term for which the respondent may
14 be held in imprisonment. The maximum term shall not be more than the
15 longest term fixed by law for the offense of which the respondent is convicted,
16 and the minimum term shall be not less than the shortest term fixed by law for
17 the offense. If the court suspends a portion of the sentence, the unsuspended
18 portion of the sentence shall be the minimum term of sentence solely for the
19 purpose of any reductions of term for good behavior as set forth in 28 V.S.A.

20 § 811. A sentence shall not be considered fixed as long as the maximum and
21 minimum terms are not identical.

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

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

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

19 (3) A defendant who has received pre-adjudication treatment in a
20 residential setting for a substance use disorder after the charge has been filed

1 shall earn a reduction of one day in the offender’s minimum and maximum
2 sentence for each day that the offender receives the inpatient treatment.

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

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

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

13 § 205. PROBATION

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

20 (2) The term of probation for misdemeanors shall be for a specific term
21 not to exceed two years unless the court, in its sole discretion, specifically

1 finds that the interests of justice require a longer ~~or an indefinite~~ period of
2 probation.

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

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

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

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

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

1 the procedures set forth in Rule 32.1 of the Vermont Rules of Criminal
2 Procedure.

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

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

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

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

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

1 (D) not be convicted of a criminal offense during the term of
2 probation.

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

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

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

6 (C) Operating after suspension or revocation of license under
7 23 V.S.A. § 674(a).

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

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

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

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

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

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

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

16 § 1091(a).

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

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

19 (M) [Repealed.]

1 (N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)
2 unless the original charge was a listed offense as defined in 13 V.S.A.
3 § 5301(7).

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

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

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

9 (d) A probationer shall receive one day of credit towards the probationer's
10 minimum sentence for each day served on probation without a violation filed.
11 Upon violating a condition of probation, the probationer shall cease accruing
12 credit towards the minimum sentence the day the violation is filed with the
13 court. Once a probationer accrues credit equal to the maximum term of
14 imprisonment for the offense, the court shall terminate the probation and
15 discharge the person pursuant to section 251 of this title.

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

17 § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF
18 PROBATION

19 (a) Revocation and imposition of sentence.

20 (1) If a violation is established by a proceeding conducted in accordance
21 with section 302 of this title, the court may, in its discretion, revoke probation

1 and require the probationer to serve the remainder of the sentence that was
2 suspended or order that the remainder of the sentence be served in the
3 community pursuant to the provisions of chapter 6 of this title.

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

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

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

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

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

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

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

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

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

8 (e) Rules. The Department of Corrections shall adopt rules pursuant to
9 3 V.S.A. chapter 25 that establish graduated sanction guidelines for probation
10 violations as an alternative to revocation and imposition of the remainder of
11 the original sentence. These guidelines do not grant the Department any
12 authority to impose sanctions for probation violations.

13 * * * Parole * * *

14 Sec. 6. 28 V.S.A. § 402 is amended to read:

15 § 402. DEFINITIONS

16 ~~Whenever~~ As used in this chapter:

17 (1) “Parole” means the release of an inmate to the community by the
18 Parole Board before the end of the inmate’s sentence subject to conditions
19 imposed by the Board and subject to the supervision and control of the
20 Commissioner. If a court or other authority files a warrant or detainer against

1 an inmate, the Board may release him or her on parole to answer the warrant
2 and serve any subsequent sentences.

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

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

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

8 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION; PRESUMPTIVE
9 PAROLE

10 (a) Parole eligibility. ~~An inmate~~ A person who is serving a sentence of
11 imprisonment who is not eligible for presumptive parole pursuant to subsection
12 (b) of this section shall be eligible for parole consideration as follows:

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

16 (2) If the ~~inmate’s~~ person’s sentence has a minimum term, the ~~inmate~~
17 person shall be eligible for parole consideration after the ~~inmate~~ person has
18 served the minimum term of the sentence.

19 (3) If the person is 65 years of age or older, is not serving a sentence for
20 committing a crime specified in [33 V.S.A. § 5204(a)] OR [13 V.S.A. § 5301],
21 and has served five years but not served the minimum term of the sentence, the
22 person shall be eligible for presumptive release in accordance with subsection

1 502a(e) of this title, unless the person has programming requirements that have
2 not been fulfilled or has received a major disciplinary conviction within the
3 previous 12 months. [SHOULD THIS APPLY TO REGULAR OR
4 PRESUMPTIVE PAROLE?]

5 (b) Presumptive parole.

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

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

12 (B) has no outstanding warrants, detainers, commitments, or pending
13 charges;

14 (C) is compliant with the person's case plan during the period of
15 incarceration if the person is incarcerated for less than 90 days or is compliant
16 for the 90 days preceding the completion of the person's minimum term if the
17 person is incarcerated for 90 days or more;

18 (D) is compliant with the conditions of the person's supervision if the
19 person is supervised in the community on furlough during:

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

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

3 (E) has no major disciplinary convictions or pending infractions
4 during the period of incarceration if the person is incarcerated for less than 12
5 months, or has no major disciplinary convictions or pending infractions during
6 the preceding 12 months if the person is incarcerated for 12 months or more;

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

8 (G) is not serving a sentence for committing a crime specified in [33
9 V.S.A. § 5204(a)] OR [13 V.S.A. § 5301].

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

11 § 502. PAROLE INTERVIEWS AND REVIEWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 502a. RELEASE ON PAROLE

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

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

15 (1) the inmate is eligible for parole;

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

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

20 (c) A parole under subsection (b) or (e) of this section shall be ordered only
21 for the best interests of the community and of the inmate, and shall not be

1 regarded as an award of clemency, a reduction of sentence, or a conditional
2 pardon.

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

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

1 (2) The Department shall recommend presumptive release for each
2 eligible inmate unless it determines, based on [the preponderance of the
3 evidence] OR [clear and convincing evidence] that:

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

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

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

14 (B) The Parole Board shall conduct a parole hearing pursuant to section
15 502 of this title for each eligible inmate that the Department determines is not
16 appropriate for release based on the criteria in subdivision (2) of this
17 subsection.

18 Sec. 10. 28 V.S.A. § 507 is amended to read:

19 § 507. NOTIFICATION TO VICTIM AND OPPORTUNITY TO TESTIFY

20 (a) At least 30 days prior to a parole eligibility hearing, the victim of a
21 listed crime as defined in 13 V.S.A. § 5301(7), shall be notified as to the time

1 and location of the hearing. Such notification may be waived by the victim in
2 writing.

3 (b) At a parole eligibility hearing, unless waived by the victim of a listed
4 crime as defined in 13 V.S.A. § 5301(7), the inmate shall not be present when
5 the victim testifies before the Parole Board.

6 (c) Parole Board proceedings shall be subject to the Vermont Open
7 Meeting Law.

8 (d) As used in this section, “victim” means:

9 (1) a victim of the listed crime for which the Parole Board is
10 determining the inmate’s eligibility for parole; and

11 (2) a victim of a listed crime of which the inmate was convicted other
12 than the listed crime for which the Parole Board is determining the inmate’s
13 eligibility for parole.

14 * * * Furlough * * *

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

16 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

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

1 (1) To visit a critically ill relative.

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

3 (3) To obtain medical services.

4 (4) To contact prospective employers.

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

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

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

19 (c) The extension of the limits of the place of confinement authorized by
20 this section shall in no way be interpreted as a probation or parole of the
21 offender, but shall constitute solely a permitted extension of the limits of the

1 place of confinement for offenders committed to the custody of the
2 Commissioner.

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

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

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

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

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

11 § 808a. TREATMENT FURLOUGH

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

17 (b) Provided the approval of the sentencing judge is first obtained, the
18 Department may place on treatment furlough an offender who has not yet
19 served the minimum term of the sentence, who, in the Department's
20 determination, needs residential treatment services not available in a
21 correctional facility. The services may include treatment for substance abuse

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

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

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

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

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

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

6 FURLOUGH

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

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

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

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

20 (b) The offender's continued supervision in the community is conditioned
21 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) If the Department interrupts an offender’s community supervision**
2 **furlough for [six months or longer] OR [90 days or longer] following a**
3 **technical violation of conditions, the Department shall notify the Office of the**
4 **Defender General of the interrupt.**

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

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

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

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

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

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

20 § 818. EARNED GOOD TIME; REDUCTION OF TERM

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

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

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

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

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

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

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

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

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

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

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

19 § 808d. DEFINITION; ELIGIBLE MISDEMEANOR; ~~FURLOUGH AT~~

20 ~~THE DISCRETION OF THE DEPARTMENT~~

1 (a)(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 use data obtained by the Crime Research
12 Group in its work pursuant to this section.

13 (3) On or before December 1, 2020, the Commission shall report to the
14 Joint Legislative Justice Oversight Committee with the results of its work
15 pursuant to this section.

16 (b) During the 2020 legislative interim, the Chief Superior Judge, the
17 Attorney General, the Defender General, the Department of Corrections, and
18 the Executive Director of the Department of State's Attorneys and Sheriffs
19 shall identify existing data that explores the relationships between
20 demographic factors and sentencing outcomes and determine whether and
21 where current data systems and collections are insufficient for additional

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

8 Sec. 20. JUSTICE REINVESTMENT II APPROPRIATION

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

12 (1) \$400,000.00 is reserved for evidence-based domestic violence
13 intervention programming;

14 (2) \$1,000,000.00 is reserved for new evidence-based transitional
15 housing programming; and

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

19 (b) The General Assembly intends that this appropriation of onetime funds
20 is to immediately invest funds to reduce recidivism and increase public safety.

1 and for savings achieved in and FY21 as a result of the legislative action taken
2 in this act to be used to fund these investments in FY22 and in the future.

3 Sec. 21. REPEALS

4 28 V.S.A. § 808b (home confinement furlough) and 28 V.S.A. § 808c
5 (reintegration furlough) are repealed on July 1, 2020.

6 * * * Effective Dates * * *

7 Sec. 22. EFFECTIVE DATES

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

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