

1 S.18

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 13, 2021

5 Subject: Corrections; earned good time; disqualifying offenses

6 Statement of purpose of bill as introduced: This bill proposes to limit the
7 availability of earned good time sentence reductions for offenders convicted of
8 certain crimes.

9 An act relating to limiting earned good time sentence reductions for
10 offenders convicted of certain crimes

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

12 ~~Sec. 1. 28 V.S.A. § 818 is amended to read:~~

13 § 818. EARNED GOOD TIME; REDUCTION OF TERM

14 (a) On or before September 1, 2020, the Department of Corrections shall
15 file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned
16 good time program to become effective on January 1, 2021. The
17 Commissioner shall adopt rules to carry out the provisions of this section as an
18 emergency rule and concurrently propose them as a permanent rule. The
19 emergency rule shall be deemed to meet the standard for the adoption of
20 emergency rules pursuant to 3 V.S.A. § 844(a).

1 ~~(b) The earned good time program implemented pursuant to this section~~

2 shall comply with the following standards:

3 (1) The program shall be available for all sentenced offenders, including
4 furloughed offenders, provided that the program shall not be available to
5 offenders on probation or parole, to offenders eligible for a reduction of term
6 pursuant to section 311 of this title, or to offenders sentenced to life without
7 parole. Offenders currently serving a sentence shall be eligible to begin
8 earning a reduction in term when the earned good time program becomes
9 effective. Notwithstanding this subdivision (1), when an offender is convicted
10 of a disqualifying offense, the offender's ability to participate and earn good
11 time in the program shall be determined pursuant to subdivisions (5) and (6) of
12 this subsection.

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

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

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

20 (3) An offender who receives post-adjudication treatment in a
21 residential setting for a substance use disorder shall earn a reduction of one

1 ~~day in the minimum and maximum sentence for each day that the offender~~
2 receives the inpatient treatment. While a person is in residential substance
3 abuse treatment, he or she shall not be eligible for good time except as
4 provided in this subsection.

5 (4) The Department shall:

6 (A) ensure that all victims of record are notified of the earned good
7 time program at its outset and made aware of the option to receive
8 notifications from the Department pursuant to this subdivision;

9 (B) provide timely notice not less frequently than every 90 days to
10 the offender any time the offender receives a reduction in his or her term of
11 supervision pursuant to this section;

12 (C) maintain a system that documents and records all such reductions
13 in each offender's permanent record; and

14 (D) record any reduction in an offender's term of supervision
15 pursuant to this section on a monthly basis and ensure that victims who want
16 information regarding changes in scheduled release dates have access to such
17 information.

18 (5) An offender who is serving a sentence for a disqualifying offense on
19 the effective date of this subdivision (5) shall not earn any good time sentence
20 reductions under this section after the effective date of this act. This

1 ~~subdivision (5) shall not be construed to limit or affect good time that an~~
2 ~~offender has earned on or before the effective date of this act.~~

3 (6) When a defendant is sentenced for a disqualifying offense on or after
4 the effective date of this act, the defendant may petition the court for a
5 determination that he or she is eligible to earn good time under this section.
6 The court shall grant the petition and order the Department to permit the
7 defendant to participate in the earned good time program if the court finds that
8 the defendant's participation would serve the interests of justice without
9 unreasonably affecting public safety. If the court denies the petition, or if the
10 defendant does not file a petition at sentencing, the defendant shall not be
11 eligible to earn good time under this section.

12 (c) As used in this section, "disqualifying offense" means:

13 (1) arson causing death in violation of 13 V.S.A. § 501;

14 (2) murder in violation of 13 V.S.A. § 2301;

15 (3) manslaughter in violation of 13 V.S.A. § 2304;

16 (4) kidnapping in violation of 13 V.S.A. § 2405;

17 (5) lewd and lascivious conduct with a child in violation of 13 V.S.A.

18 § 2602;

19 (6) sexual assault in violation of 13 V.S.A. § 3252(a) or (b);

20 ~~(7) aggravated sexual assault in violation of 13 V.S.A. § 3253, or~~

1 ~~(8) aggravated sexual assault of a child in violation of 13 V.S.A.~~

2 ~~§ 3253a.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on passage.~~

~~Sec. 1. 13 V.S.A. § 5321 is amended to read:~~

~~§ 5321. APPEARANCE BY VICTIM~~

~~* * *~~

~~(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence that includes a period of incarceration, that a sentence of incarceration is to the custody of the Commissioner of Corrections and that the Commissioner of Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim ~~and shall also, explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated, and inform the victim of the maximum amount of earned time that the defendant could accrue and that earned time only affects when a defendant is eligible for parole consideration but does not necessarily result in the defendant's release.~~~~

~~* * *~~

~~Sec. 2. 28 V.S.A. § 818 is amended to read:~~

~~§ 818. EARNED ~~GOOD~~ TIME; REDUCTION OF TERM~~

~~(a) On or before September 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned ~~good~~ time program to become effective on January 1, 2021. The Commissioner shall adopt rules to carry out the provisions of this section as an emergency rule and concurrently propose them as a permanent rule. The emergency rule shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a).~~

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

~~(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be~~

~~available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to section 811 of this title, to offenders sentenced to serve an interrupted sentence, or to offenders sentenced to life without parole. Offenders currently serving a sentence shall be eligible to begin earning a reduction in term when the earned good time program becomes effective. Notwithstanding this subdivision (1), when an offender has been convicted of a disqualifying offense, the offender's ability to participate and earn time in the program shall be determined pursuant to subdivision (5) of this subsection.~~

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

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

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

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

(4) The Department shall:

(A) ensure that all victims of record are notified of the earned good time program at its outset and made aware of the option to receive notifications from the Department pursuant to this subdivision;

(B) provide timely notice not less frequently than every 90 days to the offender any time the offender receives a reduction in his or her term of supervision pursuant to this section;

(C) maintain a system that documents and records all such reductions in each offender's permanent record; and

(D) record any reduction in an offender's term of supervision pursuant to this section on a monthly basis and ensure that victims who want information regarding changes in scheduled release dates have access to such information.

~~(5) Notwithstanding 1 V.S.A. § 214, an offender who is serving a sentence for a disqualifying offense on the effective date of this subdivision (5) shall not earn any earned time sentence reductions under this section after the effective date of this act. This subdivision (5) shall not be construed to limit or~~

~~effect earned time that an offender has earned on or before the effective date of this act.~~

~~(c) As used in this section:~~

~~(1) "Disqualifying offense" means:~~

~~(A) murder in violation of 13 V.S.A. § 2301;~~

~~(B) voluntary manslaughter in violation of 13 V.S.A. § 2304;~~

~~(C) kidnapping in violation of 13 V.S.A. § 2405;~~

~~(D) lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602, provided that the offense shall not be considered a disqualifying offense if the offender is under 18 years of age, the child is at least 12 years of age, and the conduct is consensual;~~

~~(E) sexual assault in violation of 13 V.S.A. § 3252(a) or (b);~~

~~(F) aggravated sexual assault in violation of 13 V.S.A. § 3253; or~~

~~(G) aggravated sexual assault of a child in violation of 13 V.S.A. § 3253a.~~

~~(2) "Interrupted sentence" means a sentence that is not served continuously, including a sentence to be served in intervals or a sentence to the work crew.~~

Sec. 3. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. 13 V.S.A. § 5321 is amended to read:

§ 5321. APPEARANCE BY VICTIM

* * *

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence that includes a period of incarceration, that a sentence of incarceration is to the custody of the Commissioner of Corrections and that the Commissioner of Corrections has the authority to affect the actual time the defendant shall serve in incarceration through ~~good~~ earned time credit, furlough, work-release, and other early release programs. In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim ~~and shall also~~, explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated, and inform the victim of the maximum amount of earned time that the defendant

could accrue and that earned time only affects when a defendant is eligible for parole consideration but does not necessarily result in the defendant's release.

* * *

Sec. 2. 28 V.S.A. § 818 is amended to read:

§ 818. EARNED GOOD TIME; REDUCTION OF TERM

(a) On or before September 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned good time program to become effective on January 1, 2021. The Commissioner shall adopt rules to carry out the provisions of this section as an emergency rule and concurrently propose them as a permanent rule. The emergency rule shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

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

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to section 811 of this title, to offenders sentenced to serve an interrupted sentence, or to offenders sentenced to life without parole. Offenders currently serving a sentence shall be eligible to begin earning a reduction in term when the earned good time program becomes effective. Notwithstanding this subdivision (1), when an offender has been convicted of a disqualifying offense, the offender's ability to participate and earn time in the program shall be determined pursuant to subdivision (5) of this subsection.

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

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

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

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

(4) The Department shall:

(A) ensure that all victims of record are notified of the earned good time program at its outset and made aware of the option to receive notifications from the Department pursuant to this subdivision;

(B) provide timely notice not less frequently than every 90 days to the offender any time the offender receives a reduction in his or her term of supervision pursuant to this section;

(C) maintain a system that documents and records all such reductions in each offender's permanent record; and

(D) record any reduction in an offender's term of supervision pursuant to this section on a monthly basis and ensure that victims who want information regarding changes in scheduled release dates have access to such information.

(5) Notwithstanding 1 V.S.A. § 214, an offender who was serving a sentence for a disqualifying offense on January 1, 2021 shall not earn any earned time sentence reductions under this section after the effective date of this act. This subdivision (5) shall not be construed to limit or affect earned time that an offender has earned on or before the effective date of this act.

(c) As used in this section:

(1) "Disqualifying offense" means:

(A) murder in violation of 13 V.S.A. § 2301;

(B) voluntary manslaughter in violation of 13 V.S.A. § 2304;

(C) kidnapping in violation of 13 V.S.A. § 2405;

(D) lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602, provided that the offense shall not be considered a disqualifying offense if the offender is under 18 years of age, the child is at least 12 years of age, and the conduct is consensual;

(E) sexual assault in violation of 13 V.S.A. § 3252(a) or (b);

(F) aggravated sexual assault in violation of 13 V.S.A. § 3253; or

(G) aggravated sexual assault of a child in violation of 13 V.S.A. § 3253a.

(2) "Interrupted sentence" means a sentence that is not served continuously, including a sentence to be served in intervals or a sentence to the work crew.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.