VERMONT CHILDRENS ALLIANCE

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To: Members of the House Committee on Corrections and Institutions
From: Jennifer Poehlmann, J.D., Director of Public Policy and Outreach
Vermont Children's Alliance
Date: March 30, 2021

RE: S.18/Earned Good Time

I am writing on behalf of the Vermont Children's Alliance (VCA) to express our support for S.18 and its amendments to the Earned Good Time provisions established within 28 V.S.A. sec.818(b). The VCA is the accredited state chapter of the National Children's Alliance, and membership organization for Vermont's 13 Child Advocacy Centers (CACs) and Special Investigation Units (SIUs). Vermont's CACs are child-focused programs that ensure a multi-disciplinary response to allegations of child abuse - conducting interviews and coordinating team decisions about the investigation, treatment, management, and prosecution of child abuse cases. Additionally, Vermont's SIUs provide the same function with respect to cases of adult sexual assault and, in some counties, domestic violence.

The VCA is mindful of, and applauds, the efforts which continue to be made by members of this Committee and our entire Legislature to consider responsible and sensible reform of the criminal justice system; reform which considers the effective use of limited resources, development of additional evidence-based approaches, and promotion of successful offender reintegration strategies, while recognizing the harm caused to victims and communities.

Toward these ends, we strongly support S.18 and the amendments proposed therein to 28 V.S.A. sec.818, entitled "Earned good time: reduction of term". We respectfully offer the following for your consideration:

- **We strongly endorse S.18's disqualification of offenders convicted of certain enumerated crimes from earning time off a sentence where that offender was sentenced prior to the time the recent changes took effect.**

Our concerns relative to "earned good time" do not extend to those convicted of non-violent offenses. We acknowledge the important role that a well-designed good time program can play in managing an incarcerated population and re-integrating those who do not pose a risk to public safety.

The vast majority of the crimes enumerated in S.18 as "disqualifying" fall under the purview of Vermont's CACs/SIUs. These crimes are appropriately regarded as among the most serious and have a profound impact on victims and communities. Commendably, the Legislature has recognized this through its unwavering commitment to the establishment and ongoing support of the SIUs and their ensuing partnership with CACs. This skilled, committed and collaborative approach strengthens Vermont's ability to respond to these cases and mitigates trauma to victims.

It is inconceivable to imagine how the victim of one of the "disqualifying crimes" could be expected to function when they could be notified in any and perhaps every month of a change in the offender's sentence and release date. While we consider offender re-integration, we must also

do this in the context of considering the impact our systems have on a victim's ability to re-integrate.

The integral role that plea agreements play in our system and its impact on this policy discussion, cannot be overlooked. With approximately 95% of Vermont's criminal cases resolving through a plea agreement, the negotiation and utilization of these agreements is a critical tool relied upon within the criminal justice system, with benefit to all parties involved. While the offender thereby avoids the risk that a trial would pose, the victim also avoids the risk of being re-traumatized through participation in the court process. We cannot stress enough how important this tool is for our multi-disciplinary teams as they strive to support the most vulnerable of Vermont's victims, our children. From our perspective, plea agreements in these cases, should only be altered, if at all, in extraordinary circumstances. These agreements are akin to a signed contract; allowing an offender convicted and serving an incarcerative sentence to have those terms changed dramatically alters the terms of the contract to the benefit of only one party without redress available to the other. This would be a clear violation of basic principals of fundamental fairness.

- **Prospectively, offenders convicted of the offenses enumerated as "disqualifying" and sentence to a prison term should have to comply with DOC's offense-specific risk reduction treatment recommendations in order to earn "good time", absent good cause.**

The question has been raised in this Committee's discussion as to whether an offender must do something other than to have not committed a major disciplinary violation in order to earn time off their minimum and maximum. In our view, a plain reading of the Bill and of current law clearly indicates the answer is no, they do not. The offender, regardless of the offense, need not participate in treatment or do anything more to earn the award. The Bill and current law make this clear, as does the action of the Legislature in passing Act 148.

In 2019, the Legislature passed Act 56, which reinstituted the good time program. Within this Act, the Legislature included that as part of the "good time" program, under then 28 V.S.A. 818(b)(2)(C), the offender must also "comply with a merit-based system designed to incentivize offenders to meet milestones identified by the Department that prepare the offender for re-entry". This language was specifically struck with the passage of Act 148 only a year later, and not included within any other provision or Rule that we have been made aware of.

Certainly, we understand that the fact an offender has "earned" this time does not equate with release upon their satisfying the "new minimum". Whether they will be though is an open question; our system should provide some level of certainty for victims of violent crimes. We respectfully submit that prospectively, for an offender convicted of a "disqualifying offense" to earn time off their minimum and maximum, they must comply with DOC's programming recommendations specific to their offense, where such programming is available.

We believe that for offenders convicted of serious and violent crimes, the privilege of earning what would amount to a week per month off a sentence should not simply be tied to "doing no harm" by avoiding a major disciplinary violation; it should encompass engaging in activities identified as in fact increasing chances for successful re-entry into the community. While we

understand this may not be the time to consider re-instituting such a requirement, we do wish to highlight this change in order that the Committee understand why many victims may strongly feel that not enough is being asked of serious violent offenders in order to earn this privilege moving forward.

In conclusion, Vermont's CACs and SIUs support S.18 and are grateful for the time this Committee continues to take to address a very complex and important issue. We are aware of the difficult work you do to identify outcomes and solutions that balance the multiple considerations and perspectives at play, and thank you for providing us with a voice in this process.