

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 Senate Bill No. 338 entitled “An act relating to justice reinvestment”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS AND PURPOSE

8 (a) The General Assembly finds:

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

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

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

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

20 (5) Revocations and returns from supervision are driving a large share of
21 prison admissions, and limited funding leaves large numbers of high-risk

1 people without the programs and services they need to succeed in the
2 community.

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

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

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

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

12 (2) Make evidence-based programming available to individuals
13 transitioning back into the community in order to support their transition and
14 reduce violations, revocations, and reincarceration.

15 (3) Streamline the furlough system to eliminate multiple furlough
16 statuses without limiting the availability of supervision within the community
17 for inmates.

18 * * * Probation * * *

19 Sec. 2. 13 V.S.A. § 7031 is amended to read:

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

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

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

18 (1) The period of credit for concurrent and consecutive sentences shall
19 include all days served from the date of arraignment or the date of the earliest
20 detention for the offense, whichever occurs first, and end on the date of the
21 sentencing. Only a single credit shall be awarded in cases of consecutive

1 sentences, and no credit for one period of time shall be applied to a later
2 period.

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

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

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

18 (d) A person who receives a zero minimum sentence for a conviction of a
19 nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301
20 shall report to probation and parole as directed by the court and begin to serve

1 the sentence in the community immediately, unless the person is serving a
2 prior sentence at the time.

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

4 § 205. PROBATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (D) not be convicted of a criminal offense during the term of
16 probation.

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

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

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

20 (C) Operating after suspension or revocation of license under
21 23 V.S.A. § 674(a).

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

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

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

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

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

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

8 (J) Negligent operation of a motor vehicle under 23 V.S.A.
9 § 1091(a).

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

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

12 (M) [Repealed.]

13 (N) Simple assault by mutual consent under 13 V.S.A. § 1023(b)
14 unless the original charge was a listed offense as defined in 13 V.S.A.
15 § 5301(7).

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

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

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

1 (d)(1) A probationer shall receive one day of credit towards the
2 probationer’s minimum sentence for each day served on probation. The
3 probationer shall cease accruing credit towards the minimum sentence the day
4 an arrest warrant for the probationer is filed. If the court finds that the
5 probationer violated the terms of probation and returns the person to probation,
6 the court shall determine whether the person may again accrue credit towards
7 the minimum sentence and when the accrual shall commence. The court shall
8 indicate the amount of credit to apply on the sentencing document. If the court
9 finds no violation occurred, there shall be no interruption in the probationer’s
10 accrual of credit.

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

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

15 § 304. DISPOSITION ALTERNATIVES UPON VIOLATION OF

16 PROBATION

17 (a) Revocation and imposition of sentence.

18 (1) If a violation is established by a proceeding conducted in accordance
19 with section 302 of this title, the court may, in its discretion, revoke probation
20 and require the probationer to serve the remainder of the sentence that was

1 suspended or order that the remainder of the sentence be served in the
2 community pursuant to the provisions of chapter 6 of this title.

3 (2) In the event the court revokes probation and requires the probationer
4 to serve the suspended sentence pursuant to this section, the duration of the
5 remaining suspended sentence shall be reduced in accordance with
6 subsection 205(d) of this title and 13 V.S.A. § 7031(b)(2). The court shall
7 indicate the total number of days credited towards the minimum sentence on
8 the sentencing document.

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

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

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

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

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

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

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

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

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

15 * * * Parole * * *

16 Sec. 5. 28 V.S.A. § 402 is amended to read:

17 § 402. DEFINITIONS

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

19 (1) "Parole" means the release of an inmate to the community by the
20 Parole Board before the end of the inmate's sentence subject to conditions
21 imposed by the Board and subject to the supervision and control of the

1 Commissioner. If a court or other authority files a warrant or detainer against
2 an inmate, the Board may release him or her on parole to answer the warrant
3 and serve any subsequent sentences.

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

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

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

9 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

10 An inmate who is serving a sentence of imprisonment who is not eligible
11 for presumptive parole pursuant to section 501a of this title shall be eligible for
12 parole consideration as follows:

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

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

19 (3) If the inmate is 65 years of age or older, is not serving a sentence of
20 life without parole, and has served five years but not the minimum term of the
21 sentence, the inmate shall be eligible for parole consideration unless the inmate

1 has programming requirements that have not been fulfilled or has received a
2 major disciplinary rule violation within the previous 12 months.

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

4 § 501a. PRESUMPTIVE PAROLE

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

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

11 (2) has no outstanding warrants, detainers, commitments, or pending
12 charges;

13 (3) is compliant with the required services and programming portion of
14 the inmate’s case plan during the period of incarceration if the inmate is
15 incarcerated for less than 90 days or is compliant for the 90 days preceding the
16 completion of the inmate’s minimum term if the inmate is incarcerated for 90
17 days or more;

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

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

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

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

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

8 (7) is not serving a sentence for committing a crime specified in
9 13 V.S.A. § 5301.

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

11 § 501a. PRESUMPTIVE PAROLE

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

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

18 (2) has no outstanding warrants, detainers, commitments, or pending
19 charges;

20 (3) is compliant with the required services and programming portion of
21 the inmate’s case plan during the period of incarceration if the inmate is

1 incarcerated for less than 90 days or is compliant for the 90 days preceding the
2 completion of the inmate's minimum term if the inmate is incarcerated for 90
3 days or more;

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

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

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

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

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

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

16 ~~13 V.S.A. § 5301~~ 33 V.S.A. § 5204(a).

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

18 § 502. PAROLE INTERVIEWS AND REVIEWS

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

21 The Board shall consider all pertinent information regarding an inmate in order

1 to determine the inmate's eligibility for parole. The Board may grant parole
2 only after an inmate is interviewed in accordance with this section. The Parole
3 Board may conduct the interview in person, by telephone or videoconference,
4 or by any other method it deems appropriate.

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

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

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

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

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

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

18 (2) ~~If the inmate is serving a sentence with a maximum of 15 years up to~~
19 ~~a maximum of life:~~

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

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 may conduct an~~
4 ~~interview, but not more than once in any two-year period.~~

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

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

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

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

15 § 502a. RELEASE ON PAROLE

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

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

4 (1) the inmate is eligible for parole;

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

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

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

13 (d) Notwithstanding subsection (a) or (e) of this section, or any other
14 provision of law to the contrary, any inmate who is serving a sentence,
15 including an inmate who has not yet served the minimum term of the sentence,
16 who is diagnosed as having a terminal or serious medical condition so as to
17 render the inmate unlikely to be physically capable of presenting a danger to
18 society, may be released on medical parole to a hospital, hospice, other
19 licensed inpatient facility, or suitable housing accommodation as specified by
20 the Parole Board. Provided the inmate has authorized the release of his or her
21 personal health information, the Department shall promptly notify the Parole

1 Board upon receipt of medical information of an inmate’s diagnosis of a
2 terminal or serious medical condition. As used in this subsection, a “serious
3 medical condition” does not mean a condition caused by noncompliance with a
4 medical treatment plan.

5 (e)(1) The Department shall identify each inmate meeting the presumptive
6 parole eligibility criteria in section 501a of this title and refer each eligible
7 inmate that does not meet the risk criteria set forth in subdivision (2) of this
8 subsection to the Parole Board for an administrative review at least 60 days
9 prior to the inmate’s eligibility date.

10 (2) The Department shall screen each inmate it identifies as eligible for
11 presumptive parole for the risk criteria set forth in this subdivision. If the
12 Department determines that, based on clear and convincing evidence, there is a
13 reasonable probability that the inmate’s release would result in a detriment to
14 the community, or that the inmate is not willing and capable of fulfilling the
15 obligations of parole, the Department shall, at least 60 days prior to the
16 inmate’s eligibility date, refer the inmate to the Parole Board for a parole
17 hearing.

18 (3)(A) Within 30 days of the inmate’s eligibility date, the Parole Board
19 shall conduct an administrative review of each inmate the Department
20 identifies as eligible for presumptive release that does not meet the risk criteria
21 set forth in subdivision (2) of this subsection. The Board may deny

1 presumptive release and set a hearing if it determines, through its
2 administrative review, that a victim or victims should have the opportunity to
3 participate in a parole hearing. If the Board determines there is a victim or
4 victims who should be notified, the Department shall notify the victim or
5 victims and the Board shall provide them with the opportunity to participate in
6 a parole hearing.

7 (B) The Parole Board shall conduct a parole hearing pursuant to
8 section 502 of this title for each eligible inmate that the Department determines
9 meets the risk criteria in subdivision (2) of this subsection.

10 * * * Furlough * * *

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

12 § 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

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

18 (1) To visit a critically ill relative.

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

20 (3) To obtain medical services.

21 (4) To contact prospective employers.

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

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

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

15 (c) The extension of the limits of the place of confinement authorized by
16 this section shall in no way be interpreted as a probation or parole of the
17 offender, but shall constitute solely a permitted extension of the limits of the
18 place of confinement for offenders committed to the custody of the
19 Commissioner.

20 (d) When any enforcement officer, as defined in 23 V.S.A. § 4, employee
21 of the Department, or correctional officer responsible for supervising an

1 offender believes the offender is in violation of any verbal or written condition
2 of the temporary furlough, the officer or employee may immediately lodge the
3 offender at a correctional facility or orally or in writing deputize any law
4 enforcement officer or agency to arrest and lodge the offender at such a
5 facility. The officer or employee shall subsequently document the reason for
6 taking such action.

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

18 ~~(f) While appropriate community housing is an important consideration in~~
19 ~~release of offenders, the Department shall not use lack of housing as the sole~~
20 ~~factor in denying furlough to offenders who have served at least their~~
21 ~~minimum sentence for a nonviolent misdemeanor or nonviolent felony~~

1 ~~provided that public safety and the best interests of the offender will be served~~
2 ~~by reentering the community on furlough. The Department shall adopt rules to~~
3 ~~implement this subsection. [Repealed.]~~

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

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

7 § 808a. TREATMENT FURLOUGH

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

13 (b) Provided the approval of the sentencing judge, if available, otherwise a
14 Superior Court judge, is first obtained, the Department may place on treatment
15 furlough an offender who has not yet served the minimum term of the
16 sentence, who, in the Department's determination, needs residential treatment
17 services not available in a correctional facility. The services may include
18 treatment for substance abuse or personal violence or any other condition that
19 the Department has determined should be addressed in order to reduce the
20 offender's risk to reoffend or cause harm to himself or herself or to others in
21 the facility. The offender shall be released only to a hospital or residential

1 treatment facility that provides services to the general population. The State's
2 share of the cost of placement in such a facility, net of any private or federal
3 participation, shall be paid pursuant to memoranda of agreement between and
4 within State agencies reflective of their shared responsibilities to maximize the
5 efficient and effective use of State resources. In the event that a memorandum
6 of agreement cannot be reached, the Secretary of Administration shall make a
7 final determination as to the manner in which costs will be allocated.

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

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

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

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

2 FURLOUGH

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

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

10 (2) is ineligible for or refuses presumptive parole pursuant to section
11 501a of this title or has been returned or revoked to prison for a violation of
12 conditions of parole, furlough, or probation; and

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

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

20 (c) Prior to release under this section, the Department shall screen and, if
21 appropriate, assess each felony drug and property offender for substance abuse

1 treatment needs using an assessment tool designed to assess the suitability of a
2 broad range of treatment services, and it shall use the results of this assessment
3 in preparing a reentry plan. The Department shall attempt to identify all
4 necessary services in the reentry plan and work with the offender to make
5 connections to necessary services prior to release so that the offender can begin
6 receiving services immediately upon release.

7 Sec. 14. 28 V.S.A. § 724 is amended to read:

8 § 724. TERMS AND CONDITIONS OF ~~CONDITIONAL REENTRY~~

9 COMMUNITY SUPERVISION FURLOUGH

10 (a) The Department shall identify in the terms and conditions of ~~conditional~~
11 ~~reentry~~ community supervision furlough those programs necessary to reduce
12 the offender's risk of reoffense and to promote the offender's accountability
13 for progress in the reintegration process. The Department shall make all
14 determinations of violations of conditions of community supervision furlough
15 pursuant to this subchapter and any resulting alternative sentence or
16 termination of community supervision furlough status.

17 (b) Any interruption of an offender's community supervision furlough after
18 the Department has found a technical violation of furlough conditions shall
19 trigger a Department Central Office case staffing review and Department
20 notification to the Office of the Defender General if the interruption will
21 exceed 30 days.

1 (c) An offender may seek review in the Civil Division of the Superior
2 Court of the Department’s decision to revoke furlough or interrupt furlough for
3 30 days or longer pursuant to Rule 75 of the Vermont Rules of Civil
4 Procedure. The offender shall have the burden of proving by a preponderance
5 of the evidence that the Department wrongfully violated the conditions of
6 community supervision furlough or wrongfully imposed a furlough revocation
7 or interrupt that exceeds 30 days.

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

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

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

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

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

20 (2) an offender sentenced for the commission of at least one or more
21 listed crimes has, in the sole discretion of the Department, successfully

1 completed 180 days of community supervision in a conditional reentry
2 ~~program~~ furlough.

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

4 § 818. EARNED GOOD TIME; REDUCTION OF TERM

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

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

14 (1) The program shall be available for all sentenced offenders, including
15 furloughed offenders, provided that the program shall not be available to
16 offenders on probation or parole, to offenders eligible for a reduction of term
17 pursuant to section 811 of this title, or to offenders sentenced to life without
18 parole. For offenders currently serving a sentence at the time the program is
19 implemented, any reduction shall be calculated based on the offender's
20 sentence going forward in time.

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

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

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

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

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

18 (4) The Department shall provide timely notice ~~no~~ not less frequently
19 than every 90 days to the offender and to any victim of record any time the
20 offender receives a reduction in his or her term of supervision pursuant to this
21 section, and the Department shall maintain a system that documents and

1 records all such reductions in each offender’s permanent record. The
2 Department shall establish a program to ensure victims of record are notified in
3 accordance with this section.

4 (5) The program shall become effective upon the Department’s adoption
5 of ~~final proposed rules pursuant to 3 V.S.A. § 843~~ an emergency rule pursuant
6 to 3 V.S.A. § 844.

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

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

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

13 * * *

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

15 § 808e. ABSCONDING FROM FURLOUGH; WARRANT

16 (a) The Commissioner of Corrections may issue a warrant for the arrest of
17 a person who has absconded from furlough status in violation of ~~subdivision~~
18 subsection 808(a)(6), subsection 808(e) or 808(f), or section 808a, 808b, or
19 808c of this title, requiring the person to be returned to a correctional facility.

20 A law enforcement officer who is provided with a warrant issued pursuant to

1 this section shall execute the warrant and return the person who has absconded
2 from furlough to the Department of Corrections.

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

6 Sec. 18a. 13 V.S.A. § 1501 is amended to read:

7 § 1501. ESCAPE AND ATTEMPTS TO ESCAPE

8 (a) A person who, while in lawful custody:

9 (1) escapes or attempts to escape from any correctional facility or a local
10 lockup shall be imprisoned for not more than 10 years or fined not more than
11 \$5,000.00, or both; or

12 (2) escapes or attempts to escape from an officer, if the person was in
13 custody as a result of a felony, shall be imprisoned for not more than 10 years
14 or fined not more than \$5,000.00, or both; or if the person was in custody as a
15 result of a misdemeanor, shall be imprisoned for not more than two years, or
16 fined not more than \$1,000.00, or both.

17 (b)(1) A person shall not, while in lawful custody:

18 (A) fail to return from work release to the correctional facility at the
19 specified time, or visits other than the specified place, as required by the order
20 issued in accordance with 28 V.S.A. § 753;

1 (B) fail to return from furlough to the correctional facility at the
2 specified time, or visits other than the specified place, as required by the order
3 issued in accordance with 28 V.S.A. § 808(a)(1)-(5), or § 723;

4 (C) escape or attempt to escape while on release from a correctional
5 facility to do work in the service of such facility or of the Department of
6 Corrections in accordance with 28 V.S.A. § 758; or

7 (D) elope or attempt to elope from the Vermont Psychiatric Care
8 Hospital or a participating hospital, when confined by court order pursuant to
9 chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703
10 and while still serving a sentence.

11 (2) A person who violates this subsection shall be imprisoned for not
12 more than five years or fined not more than \$1,000.00, or both.

13 (3) ~~It shall not be a violation of subdivision (1)(A), (1)(B), or (1)(C) of~~
14 ~~this subsection (b) if~~ If the person is on furlough status pursuant to 28 V.S.A.
15 § 723 ~~808(a)(6), 808(e), 808(f), or 808a, 808b, or 808e~~ a violation of this
16 subdivision (1) of this subsection (b) requires a showing that the person
17 intended to escape from furlough.

18 (c) All sentences imposed under subsection (a) of this section shall be
19 consecutive to any term or sentence being served at the time of the offense.

20 (d) As used in this section:

1 (1) “No refusal system” means a system of hospitals and intensive
2 residential recovery facilities under contract with the Department of Mental
3 Health that provides high intensity services, in which the facilities shall admit
4 any individual for care if the individual meets the eligibility criteria established
5 by the Commissioner in contract.

6 (2) “Participating hospital” means a hospital under contract with the
7 Department of Mental Health to participate in the no refusal system.

8 (3) [Repealed.]

9 * * * Reports to General Assembly * * *

10 Sec. 19. RACIAL DISPARITIES IN CRIMINAL JUSTICE SYSTEM;
11 VERMONT SENTENCING COMMISSION; EXECUTIVE
12 DIRECTOR OF RACIAL EQUITY; DEPARTMENT OF
13 CORRECTIONS; REPORT

14 (a) During the 2020 legislative interim, the Racial Disparities in the
15 Criminal and Juvenile Justice System Advisory Panel, the Chief Superior
16 Judge, the Attorney General, the Defender General, the Department of
17 Corrections, and the Executive Director of the Department of State’s Attorneys
18 and Sheriffs shall work with Crime Research Group to identify existing data
19 that explores the relationships between demographic factors and sentencing
20 outcomes and determine whether and where current data systems and
21 collections are insufficient for additional analyses and what staffing or

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

9 (b)(1) During the 2020 legislative interim, the Vermont Sentencing
10 Commission shall:

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

14 (B) work with the Executive Director of Racial Equity and the Racial
15 Disparities in the Criminal and Juvenile Justice System Advisory Panel in
16 identifying the types of offenses for which there are racial and geographic
17 disparities in sentencing and propose standardized sentencing guidance for
18 those offenses.

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

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

7 Sec. 20. DEPARTMENT OF CORRECTIONS PROGRAMMING

8 WORKING GROUP

9 (a) During the 2020 legislative interim, the Chief Superior Judge, the
10 Defender General, the Department of Corrections, and the Executive Director
11 of the Department of State’s Attorneys and Sheriffs shall work with the
12 Council of State Governments to:

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

16 (2) determine how to share information about risk assessments and
17 available Department and community-based programming among each other to
18 inform plea agreement, sentencing, and probation revocation decisions;

19 (3) study the efficacy of using of probation as a default sentencing
20 structure for certain types of offenses for which connections to community-
21 based programming and regular court monitoring lead to better outcomes; and

1 (4) on or before January 15, 2021, report to the House and Senate
2 Committees on Judiciary and the House Committee on Corrections and
3 Institutions regarding the directives in this section and suggested legislative
4 action to ensure sentencing, revocation, and plea agreement decisions are
5 informed by available programming, including community treatment programs
6 and individual risk assessment information.

7 Sec. 21. PROBATION AND PAROLE REPORTS; JUDICIARY; PAROLE
8 BOARD

9 (a) On or before January 15, 2022, the Chief Superior Judge shall report to
10 the House and Senate Committees on Judiciary and the House Committee on
11 Corrections and Institutions on the implementation of credit for time served
12 on probation towards the underlying minimum sentence as established by
13 Secs. 2–4 of this act. The report shall include:

14 (1) how credit is calculated and tracked by the courts;

15 (2) a summary of probation terms imposed between January 2021 and
16 January 2022, including the length of both probation terms imposed and the
17 associated underlying sentences;

18 (3) the number of violations of probation established by the court; and

19 (4) an analysis of the administrative burden on the judiciary of
20 calculating reductions in underlying minimum sentences as required by
21 Secs. 2–4 of this act.

1 (b) On or before January 15, 2022, the Chair of the Vermont Parole Board
2 shall report to the Senate Committee on Judiciary and the House Committee on
3 Corrections and Institutions on the implementation of presumptive parole as
4 established by 28 V.S.A. § § 501a and 502a. The report shall include an
5 analysis of the current administrative burden of presumptive parole and the
6 anticipated administrative burden of expanding presumptive parole eligibility
7 to offenders who have committed a listed crime as defined in 13 V.S.A.
8 § 5201.

9 **Sec. 22. JUSTICE REINVESTMENT II WORKING GROUP**

10 (a) Creation. There is created the Justice Reinvestment II Working Group
11 to oversee the implementation of the policies established in this act.

12 (b) Membership. The working group shall be composed of the following
13 members:

14 (1) two current members of the House of Representatives, not all from
15 the same political party, who shall be appointed by the Speaker of the House;

16 (2) two current members of the Senate, not all from the same political
17 party, who shall be appointed by the Committee on Committees;

18 (3) the Chief Superior Judge or designee;

19 (4) the Commissioner of the Department of Corrections or designee;

20 (5) the Executive Director of the Parole Board or designee;

21 (6) the Defender General or designee;

1 (7) the Executive Director of the Department of State’s Attorneys and
2 Sheriffs or designee;

3 (8) the Executive Director of the Vermont Network Against Domestic
4 and Sexual Violence or designee;

5 (9) the Executive Director of Racial Equity or designee;

6 (10) the Commissioner of Public Safety or designee;

7 (11) the Secretary of Human Services or designee; and

8 (12) one member of the public with lived experience in the justice
9 system, appointed by XXX.

10 (c) Powers and duties. The Working Group shall:

11 (1) provide oversight over the rollout of Justice Reinvestment II,
12 including the implementation of case reviews and releases for individuals
13 newly eligible for presumptive parole, calculations of earned good time for
14 eligible people within Department of Corrections facilities, and the
15 Department’s efforts to assess how its graduated sanctions policies are
16 implemented in local field offices in compliance with Sec. 24 of this act;

17 (2) based on the information provided by the Agency of Human
18 Services pursuant to Sec. 23 of this act, identify current screening, assessment
19 and case planning gaps for incarcerated individuals and propose system
20 improvements for minimizing gaps in screening and assessment and ensuring

1 case plans reflect a both the person’s identified criminogenic and behavioral
2 health needs;

3 (3) developing funding and appropriation recommendations for future
4 justice reinvestments; and

5 (3) recommending any necessary legislative action based on information
6 gathered during the implementation of this Act.

7 (d) Report. On or before January 15, 2021, the Working Group shall report
8 to the House and Senate Committees on Judiciary and the House Committee
9 on Corrections and Institutions with its findings and any recommendations for
10 legislative action.

11 (e) Meetings.

12 (1) The Secretary of Human Services or designee shall call the first
13 meeting of the Working Group to occur on or before August 1, 2020.

14 (2) The Working Group shall select a chair from among its members at
15 the first meeting.

16 (3) A majority of the membership shall constitute a quorum.

17 (f) Compensation and reimbursement.

18 (1) For attendance at meetings during adjournment of the General
19 Assembly, a legislative member of the Working Group serving in their
20 capacity as a legislator shall be entitled to per diem compensation and
21 reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than X

1 meetings. These payments shall be made from monies appropriated to the
2 General Assembly.

3 (2) Other members of the Working Group [shall be entitled to per diem
4 compensation and reimbursement of expenses as permitted under 32 V.S.A.
5 § 1010 for not more than X meetings. These payments shall be made from
6 monies appropriated to XXX] OR [Other members of the Working Group shall
7 not be entitled to per diem compensation or reimbursement of expenses.]

8 **Sec. 23. AGENCY OF HUMAN SERVICES; REPORT TO JUSTICE**

9 **REINVESTMENT II WORKING GROUP**

10 On or before XXXX, the Agency of Human Services, with assistance from
11 the Council of State Governments Justice Center, shall coordinate the
12 provision of the following information to the Justice Reinvestment II Working
13 Group:

14 (1) the nature and scope of available screening and assessment of mental
15 health and substance use needs among incarcerated populations, and how
16 screening and assessment results inform case plans for sentenced individuals
17 while they are incarcerated and prior to their release onto community
18 supervision, including individuals on probation; and

19 (2) the existing behavioral health collaborative care coordination and
20 case management protocols that serve people in Department of Corrections

1 custody or supervision, and any existing challenges to information sharing
2 between service providers and the Department.

3 **Sec. 24. 2020 Acts and Resolves No. 88, Sec. 70a is amended to read:**

4 Sec. 70a. DEPARTMENT OF CORRECTIONS; GRADUATED
5 SANCTIONS; REENTRY HOUSING; REPORT

6 (a) On or before April 1, 2020, the Department of Corrections shall report
7 to the Senate Committee on Judiciary, the House Committee on Corrections
8 and Institutions, and the House and Senate Committees on Appropriations on
9 how to strengthen existing graduated sanctions and incentives policies to
10 ensure they reflect current research on best practices for responses to violation
11 behavior that most effectively achieve behavior change and uphold public
12 safety. The Department shall also identify reentry housing needs for
13 corrections populations. As a part of this work, the Department shall submit its
14 recommendations including initial cost estimates regarding:

15 (1) formalizing the use of ~~incentives and sanctions~~ positive to negative
16 reinforcements in supervision practices at a 4:1 ratio and require ~~incentives~~
17 reinforcements to be entered and tracked in the community supervision case
18 management system;

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* * *

Sec. 25. REPEALS

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

* * * Effective Dates * * *

Sec. 26. EFFECTIVE DATES

(a) This section and Secs. 16 (earned good time; reduction of term) and 25 (repeals) shall take effect on passage.

(b) Sec. 8 (presumptive parole) shall take effect on January 1, 2023.

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

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE