

Justice Reinvestment II (Act 148 of 2020) (Changes in law impacting offenders)

Effective January 1, 2021

NEW LAW

Presumptive Parole

Presumptive parole provides for the automatic parole of offenders at their minimum aggregate sentence if they meet specific criteria, outlined below. The DOC can dispute an offender's release by presenting clear and convincing evidence to the Parole Board that the release is a detriment to public safety. The Parole Board can determine if hearings are needed for victim safety.

An offender is eligible for presumptive parole who:

- has no new criminal conviction while incarcerated or on supervision for the current sentence;
- has no outstanding warrants, detainers, commitments, or pending charges;
- is in compliance with the required services and programming portion of the inmate's case plan during the incarcerative period if it is less than 90 days, or for the 90 days preceding completion of the minimum term if the term is 90 days or more;
- is in compliance with the conditions of supervision while in the community on furlough for (a) the entire period of supervision if it is less than 90 days; or (b) the 90 days prior to the consideration of parole eligibility if the period of supervision is 90 days or more;
- has no major disciplinary rule violations or pending violations during the incarcerative period if it is less than 12 months, or for the preceding 12 months if the period is 12 months or more;
- has not had parole revoked on the inmate's current sentence; and
- is not serving a sentence for committing a crime specified in 13 V.S.A. § 5301.*

Parole Reviews

The legislature changed how often the Parole Board can consider subsequent reviews of offenders who are past their minimum release date. Currently, offenders serving a sentence with a maximum of 15 years or longer received a review once every two years after the initial review.

Revised: All offenders are eligible for an annual review.

Community Supervision Furlough

- Conditional Reentry Furlough is renamed Community Supervision Furlough.
- A process is established for an offender to appeal the DOC's determination of a furlough interrupt or revocation for a technical violation that is 90-days or longer:
 - The DOC must notify the Defender General's Office.
 - The appeal must be filed with the Civil Division of the Superior Court under Rule 74 of Vermont Rules of Civil Procedure.
 - The offender must prove that the DOC abused its discretion. It is an abuse of discretion to impose an interrupt or revocation in such circumstances unless:

* The statutory citation will be changed, effective January 1, 2023, to 33 V.S.A. § 5204(a).

- The offender’s risk to reoffend can no longer be adequately controlled in the community, and no other method to control compliance is suitable; or
- The violation or pattern of violations indicate the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.

Earned Good Time

- Reinstates an Earned Good Time (EGT) program for incarcerated and furloughed offenders.
- Offenders on probation, parole, earning Work Camp Good Time, or serving life sentences without parole are ineligible.
- Eligible offenders who are “not adjudicated of a major disciplinary rule violation” and “not reincarcerated from the community for a violation of release conditions” (except for no-fault housing loss) will be awarded up to seven (7) days of EGT credit each month toward their minimum and maximum sentence.
- The DOC must record monthly EGT-related changes to offenders’ sentences, notify offenders of these changes at least every ninety days, notify victims of record of the program at its outset, and maintain a system where victims can obtain relevant information as necessary.
- Eligible offenders can begin to earn good time on January 1, 2021.

Escape from Furlough

- A person on furlough can be charged with escape if there is a showing of the intent to escape.
- The State’s Attorney decides whether to charge a person with escape.
- The DOC will provide the State’s Attorney with information to inform the decision whether to charge an inmate who was returned to incarceration on a DOC Commissioner’s Warrant with escape.

REPEALED LAW

Release to unapproved housing - 28 VSA § 808(f)

- The repeal removes the restriction on the DOC to deny furlough to eligible offenders solely for lack of approved housing.
- Eligible offenders may be approved for release to unapproved housing prior to January 1, 2021. As of January 1, 2021, housing will be approved based on the risk to public safety.

Home Confinement Furlough - 28 VSA § 808b

- Home Confinement, which allowed sentenced offenders to serve their sentences in a preapproved place of residence, is repealed.
- Eligible offenders may be approved for home confinement prior to January 1, 2021. As of January 1, 2021, no offenders will be approved for home confinement.

Reintegration Furlough - 28 VSA § 808c

- Reintegration Furlough, which allowed eligible offenders to be released to the community up to 180 days prior to the completion of their minimum sentence, is repealed.
- Offenders can earn reductions to their minimum terms by complying with the earned good time criteria.
- Eligible offenders may be released to reintegration prior to January 1, 2021. As of January 1, 2021, no offenders will be released to reintegration furlough.