

Vermont Department of Corrections
Earned Time Rule
APA Rule # 21-011

I. Authority

This rule is adopted pursuant to 28 V.S.A. § 818 which states that the Department of Corrections shall implement a program of earned time, and the Vermont Administrative Procedures Act, 3 V.S.A. §§ 800 *et seq.*

II. Purpose

The purpose of this rule is to ensure the earned time program implemented by the Department complies with the standards identified in 28 V.S.A. § 818(b).

III. Program

A. Definitions

1. Month: is defined as a calendar unit of 28-31 days, proration of which will be determined through the Department of Corrections' Sentence Computation Unit.
2. Proration: is the method used to determine earned time for eligible offenders who are incarcerated for a portion of the month. Proration is applied only for offenders who begin their sentences part way through the month.

B. Eligibility

1. Sentenced offenders, including those on furlough, are eligible for earned time beginning January 1, 2021. Earned time is not available retroactively, and is not available to detainees, offenders on probation or parole, offenders eligible for a reduction of term pursuant to 28 V.S.A. § 811, to offenders sentenced to serve an interrupted sentence, or offenders sentenced to life without parole.
2. Offenders serving a sentence for a disqualifying offense (see IV.B.2. below) on January 1, 2021 will not be eligible for earned time.

C. Criteria

Offenders will be awarded earned time for each month they meet both of the following criteria:

1. The offender has not been adjudicated of a major disciplinary rule violation as outlined in Department facility rules. "Adjudicated" rule violations do not include pending violations, or violations that remain subject to appeal rights.
2. The offender is not reincarcerated from the community for a violation of release conditions. Offenders who lose their residences through no fault of their own, however, shall not be deemed reincarcerated under this provision and shall remain eligible for earned time.

IV. Term Reductions

A. Amount

Offenders who meet the eligibility criteria shall earn a reduction of seven (7) days on the minimum and maximum sentence for each month during which the offender adheres to such criteria.

B. Exception

1. An offender receiving post-adjudication treatment for a substance abuse disorder in a residential setting is not eligible to earn a reduction of seven (7) days each month, but shall earn a reduction of one day on the minimum and maximum sentence for each day the offender receives the inpatient treatment.

2. An offender serving a sentence for a disqualifying offense on January 1, 2021 shall not earn any earned time reductions after April 26, 2021.

Disqualifying offenses are:

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

b. voluntary manslaughter in violation of 13V.S.A. §2304;

c. kidnapping on violation of 13V.S.A. §2405;

d. lewd and lascivious conduct with a child in violation of 113V.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 13V.S.A. §3252(a) or (b);

f. aggravated sexual assault in violation of 13V.S.A. §3253; or

g. aggravated sexual assault of a child in violation of 13V.S.A. 7§3253a.

C. Calculation

1. The Department will calculate and award earned time to offenders, as provided in 28 V.S.A. § 818(b)(2), for each month they meet the criteria listed in Sections III and IV, above. The Department will assess earned time awards each month following the prior month served. The Department will not assess earned time for partial months served by offenders whose minimum or maximum release dates fall on or before the last day of the month.

2. The Department will apply a calculation rubric of proration (see Earned Time Prorate Chart, below) that equitably awards earned time in whole days based on the number of incarcerated whole days for offenders whose sentences begin in the middle of the month. This proration does not apply to offenders whose minimum or maximum release dates fall on or before the last day of the month. This rubric applies the 7-day/month formula established by 28 V.S.A. § 818.

Earned Time Prorate Chart

Eligible offenders can earn up to 7 days of Earned Time each month on their minimum and maximum sentence. Prorated Earned

Time will be determined by the number of days per month earned.

<i># days incarcerated (includes furloughs) per month...</i>	1-9 days	10-18 days	19-27 days	28-31 days
<i># days on minimum & maximum sentence</i>	2	4	6	7

D. Notification

1. Offender Notification

No less frequently than every 90 days, the Department will provide notice to the offender of any earned time reduction to the offender’s term of supervision.

The Department will document and record all such reductions in each offender’s permanent record monthly.

2. Victim Notification

The Department will maintain a victim-accessible system of information on earned time sentence reductions. The Department will ensure that all victims of record are notified of the earned time program and of their right to access information on earned-time-related changes to offenders’ sentences. Victims may choose to decline access to such information.

V. Considerations

A. Out-of-State Offenders

Offenders serving Vermont sentences in out-of-state facilities can earn time under the same process as if they were housed in a Vermont facility, as long as they are otherwise eligible pursuant to the requirements set out in 28 V.S.A. § 818(b).

B. Minimum Release Eligibility

Offenders earning time credit on their minimum sentences are *eligible* for release on the new minimum date. They are not automatically released on the new minimum date.