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# VIRGINIA DEPARTMENT OF CORRECTIONS

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HAROLD W. CLARKE, DIRECTOR



## COVID-19 Response Inmate Early Release Plan

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## **Purpose:**

Pursuant to legislation, the Inmate Early Release Plan was developed and implemented by the Department of Corrections (DOC), under the authority of the Director of Corrections, and in response to the Governor's state of emergency declaration related to the COVID-19 pandemic, a communicable disease and current public health threat to the residents of the Commonwealth of Virginia as defined in §44-146.16 of the Code of Virginia.

The Inmate Early Release Plan provides a procedure for implementing legislation to allow for the discharge of inmates who meet the eligibility criteria from incarceration, prior to their scheduled release date consistent with guidance provided in the legislative mandate. The legislation authorizes the Director, during the duration of the declared emergency, to (i) discharge from incarceration or (ii) place into a lower level of supervision, including probation supervision, home electronic incarceration, or other forms of community corrections, any prisoner committed to the Department who has less than one year of his sentence remaining to be served prior to his scheduled release if the Director determines that (a) any such discharge or placement during the declared emergency will assist in maintaining the health, safety, and welfare of any prisoner discharged or placed or the prisoners remaining in state correctional facilities and (b) any such discharge or placement is compatible with the interests of society and public safety.

The Inmate Early Release Plan is only in force during the period declared by the Governor as a state of emergency pursuant to §44-146.17 of the Code of Virginia.

## **Contributing Factors**

While a segment of the inmate population is at a higher risk for severe illness and potentially life-threatening complications if exposed to COVID-19, the Department has the necessary resources to treat the virus to include 24-hour trained health care staff and access to emergency medical care if necessary, subject to the availability of resources in hospitals or other advanced care settings. It is imperative that upon release inmates who are at a higher risk of developing severe forms of COVID-19 have the resources and access to care in their community needed to mitigate the severe health risks to the inmate. Inmates at a higher risk for COVID-19 complications, who meet the eligibility criteria for release, will only be released if the necessary community support and resources are available.

There are many additional contributing factors and mitigating circumstances, which the Department must consider when establishing the criteria for releasing an inmate early from incarceration. Such factors include the risk to public safety, the safety and well-being of the offender and the inmate's family, available community resources, and access to proper health care for the treatment of an inmate's medical and mental health needs.

Therefore, this plan provides for the early release of eligible inmates who have a viable home plan and must have a risk of recidivism of medium or low.

## Early Release Criteria

The following Early Release Criteria will be utilized in considering an inmate for early release pursuant to legislation:

**Release Date:** The inmate's Good Time Release Date must be calculated and verified in order for the inmate to be considered.

**Inmate Medical Condition:** The inmate's medical condition will be considered.

**Offense History:** By legislative mandate, early release does not apply to inmates convicted of a Class 1 felony or a sexually violent offense. Consideration for early release will be based on the seriousness of the current offense, in descending order as follows:

- Non-violent Offense
- Felony Weapons Offenses
- Involuntary Manslaughter
- Voluntary Manslaughter
- Robbery
- Felony Assault
- Abduction
- Murder
- Sex Offense

**Viable Home Plan:** The inmate must have a documented approved home plan to be considered.

**Good Time Earning Level:** The inmate's current good time earning level must be I or II to be considered.

**No Active Detainers:** Inmates must have no active detainer to be considered.

**No Sexually Violent Predator Predicate Offenses:** Inmates convicted of one or more sexually violent offenses established in §37.2-903 of the Code of Virginia are not eligible pursuant to legislation.

**Recidivism Risk:** Inmates must have a risk of recidivism of medium (5-7) or low (1-4), as identified by the validated COMPAS instrument, to be considered.

## Plan Implementation

The Director of Offender Management Services is responsible for coordinating the process for the review and early release of eligible inmates during the period of the Governor's emergency declaration in accordance with current DOC operating procedures with regard to institutional and community resources.

- Research Unit staff will provide a database of eligible inmates developed from available inmate records to the Manager of the Community Release Unit.
- Community Release Unit staff will provide the list to the Chief P&P Officer of the supervising district to confirm home plans when feasible.
- The Chief P&P Officer will ensure the inmate has a viable home plan. For proposed home plans, staff will investigate and if appropriate, approve the plan. If the home plan was previously investigated and approved, staff will ensure validity of the home plan.

- Court and Legal staff will coordinate with Community Release Unit staff to set the release date for each approved inmate.
- Court and Legal staff will generate a legal update and notify the Community Release Unit and the facility Records Office.
- Community Release will prepare the release documents and make the required notifications of the inmate's pending release.
- Facility staff will prepare the inmate for release and inquire about the mode of transportation. Inmates will not be issued authorization for public transportation. If the inmate is unable to obtain transportation for the date of release, Records staff will coordinate with the Chief P&P Officer or designee to transport the inmate to the P&P Office.
- All procedural requirements established for the release of inmates from a facility will be followed.
- All decisions regarding the release of an inmate will be made by the Director of Corrections.

As a requirement of early release, inmates will be required to sign conditions of release requiring them to uphold the law and that failure to do so will result in the inmate being returned to incarceration.

Any inmate released early from incarceration under this plan will be under the authority of the Circuit Court(s) where their criminal convictions occurred. If deemed appropriate and there is a need to protect the public safety interests of the community, the supervising P&P Officer will issue a PB-15 or request a Capias should the inmate commit a new felony offense or otherwise violate their supervision conditions.

Current or prior jail credit will be unavailable towards a future revocation if it is determined that an active sentence was not satisfied prior to the inmate's early release.

## **Re-Entry Planning**

As Secretary Brian Moran, Secretary of Public Safety and Homeland Security, wrote to Legislators in correspondence dated April 17, 2020, "Virginia has the lowest recidivism rate in the nation for the fourth year in a row due to DOC's work on reentry planning and programming. The COVID-19 pandemic has disrupted, diminished, or entirely eliminated community safety nets including transitional housing options, substance use disorder treatment, mental health services, and employment opportunities. In the best of times, reentry preparation may take months or years, not weeks. DOC and DJJ must take into account the needs of the individual and the availability of services to ensure a successful return to the community."

Inmates released pursuant to this legislative mandate will be provided reentry planning in accordance with the provisions of §53.1-32.2 of the Code of Virginia. Inmates will receive adapted reentry programming based on operational requirements and the length of time until their release. Inmates will be provided with a packet containing community resource information, workforce contacts, COVID-19 precautions and any available personal identity documents.

## **Appeal Process**

Any inmate appeal regarding the application of this plan will only be accepted during the period of the declared emergency due to legislative limitation on the Director's authority to discharge inmates from incarceration. Inmates must submit their appeal using the *Offender Appeal for COVID-19 Early Release* form associated with this plan.