

COVID-19 GUIDELINES* – Release of Incarcerated Individuals

Section I: Purpose

These guidelines were developed to assist DOC staff in further expediting a reduction of the inmate population, to the extent possible within legal bounds, in response to the current health crisis. A reduction in population will allow us to better implement social distancing within facilities with the goal of minimizing the risk of contagion. The DOC will continue to identify cohorts of inmates that may be safely released without compromising public safety, taking into consideration the concerns of victims of crime and their advocates.

To safeguard the health and safety of the offender and members of the public, persons will not be released to furlough, with the exception of medical furlough as discussed below and governed by Vermont law, if symptomatic of, positive for, or medically isolated or quarantined consistent with Centers for Disease Control and Prevention (CDC) and Vermont Department of Health (VDH) guidelines.**

Section II: Order of Priorities in Reducing Population

1. Reexamine and loosen housing restrictions for offenders reentering the community

During this extraordinary period, the DOC will relax some of its current limitations regarding where an inmate may reside upon reentry. Instead, the following broad set of considerations will guide decision-making:

- The DOC will continue to collaborate with community partners and other stakeholders to locate available transitional and permanent housing options that minimize any potential health or safety risk to the offender or the community.
- An approved residence shall not have any persons symptomatic of, or positive for, COVID-19, or any persons who are or should be in medical isolation or quarantine in accordance with CDC and VDH guidelines.
- Offenders must be accessible and available to meet on a regular basis—daily if necessary—with their supervising officer. In almost all instances, this should be by phone, Skype or a similar platform, in lieu of in-person. As needed, the DOC will work with offenders to help them obtain access to technology that will facilitate such communications.
- The offender may be required to wear electronic monitoring to make sure that their movement is within prescribed geographical bounds.
- The DOC will work with the offender to find employment, if available and the offender meets qualifications, and help provide access to public benefits (Medicaid, for example).

* These guidelines will be updated as appropriate to incorporate the latest scientific, medical, and governmental recommendations, and best correctional practices. Please ensure you are using the most current document.

** In addition, offenders leaving the facilities should be provided with a short-term supply of their current medications (typically a two-week supply) and the ability to refill their prescriptions for sixty days.

2. Scan the population for persons beyond their minimum sentence that can be safely supervised in the community

- Superintendents and caseworkers will actively review their caseloads and assess whether any incarcerated individuals may be safely released to community supervision, notwithstanding barriers that previously prevented their release (e.g. failure to complete required programming).
- The DOC will review previous decisions denying furlough and cases where the offender will max out within the next 60 days, to determine whether the offender may be released sooner without jeopardizing public or victim safety.
- Offenders who do not pose an undue risk to the community or strain on law enforcement resources will be eligible for expedited release. Factors to be considered include the nature and severity of the underlying offense; whether the offender has received any Major A disciplinary infractions within the last sixty (60) days; the offender's history of compliance on furlough or parole; the availability of community or family supports upon reentry, and whether a safe housing option can be secured.
- ***It is imperative that the crime victims and their advocates are timely and fully informed of pending release consideration of the offender, and that they are afforded a voice in the decision-making process.***
- In addition to contact with DOC staff, individuals released under this provision may be required to participate, via phone, Skype or a similar platform, in appropriate counseling, programming or educational training, if available, while they remain under DOC supervision.

3. Utilize medical furlough solely for those persons who qualify under Vermont law

Advocates and others have called for the medical release of inmates during the pandemic who, though otherwise in stable health, are either elderly or have a chronic illness and may be most at risk if they were to contract the virus.

The statutory provision governing medical furlough, 28 V.S.A. § 808(e), provides in relevant part:

The Commissioner may place on medical furlough any offender who is serving a sentence, including an offender who has not yet served the minimum term of the sentence, who is diagnosed with a terminal or serious medical condition so as to render the offender unlikely to be physically capable of presenting a danger to society. . . The offender may be released to a hospital, hospice, or other licensed inpatient facility, or other housing accommodation deemed suitable by the Commissioner.

The reach of the current law is limited and clear; it does not empower the commissioner to release an inmate who is not already incapacitated by illness to the extent that they are physically incapable of presenting a public danger. Inmates with chronic, manageable conditions, or those of advanced age, may be more at risk from COVID-19 than younger, healthier inmates, but the legislatively prescribed prerequisites authorizing the commissioner to release such inmates on medical furlough are not met.

The DOC will continue to follow Vermont law and use its process for medical furlough as outlined in the Interim Memo: *Medical Furlough and Medical Parole* (eff. July 1, 2018).

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