

# VIRGINIA DEPARTMENT OF CORRECTIONS

HAROLD W. CLARKE, DIRECTOR



## COVID-19 Response Inmate Early Release Plan

State Responsible Inmates Held in a Local Correctional Facility

## **Purpose:**

Pursuant to the Budget Amendment approved by the General Assembly during the 2020 Veto Session, the Inmate Early Release Plan for State Responsible Inmates Held in a Local Correctional Facility 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 for State Responsible Inmates Held in a Local Correctional Facility provides a procedure for implementing the Budget Amendment approved by the General Assembly during the 2020 Veto Session to allow for the discharge of state responsible inmates held in a local correctional facility, who meet the eligibility criteria for release from incarceration, prior to their scheduled release date consistent with guidance provided in the Budget Amendment approved by the General Assembly during the 2020 Veto Session. The Budget Amendment approved by the General Assembly during the 2020 Veto Session 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.

This document applies to state responsible inmates who are currently held in a local correctional facility under §53.1-20 and §53.1-21. All local and regional jails may elect to participate in this plan for consideration of early release of state responsible inmates from their facilities by providing the required information.

## **Contributing Factors**

It is imperative that upon release state responsible inmates held in a local correctional facility 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. State responsible inmates held in a local correctional facility who are at a higher risk for COVID-19 complications and 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 a state responsible inmate held in a local correctional facility early from incarceration. Such factors include the risk to public safety, the safety and well-being of the state responsible inmate 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 state responsible inmates who are held in a local correctional facility and who have a viable home plan and a risk of recidivism of medium or low.

## Early Release Criteria

The following Early Release Criteria will be utilized by the Director of Corrections or his designee in considering a state responsible inmate held in a local correctional facility for early release pursuant to legislation:

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

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

**Offense History:** By the Budget Amendment approved by the General Assembly during the 2020 Veto Session, **early release does not apply to state responsible 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 state responsible inmate must have a documented approved home plan to be considered.

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

**No Active Detainers:** The state responsible inmate must have no active detainer or pending criminal charges to be considered.

**No Sexually Violent Predator Predicate Offenses:** State responsible 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:** The inmate must have a medium or low risk of recidivism 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 state responsible inmates being held in a local correctional facility during the period of the Governor's emergency declaration in accordance with current DOC operating procedures with regard to institutional and community resources.

- Offender Management Services staff will provide the Sheriff or Jail Administrator with a list of inmates held in their facility with a calculated and verified Good Time Release Date. The list will be updated bi-monthly during the period of the emergency.

- For DOC’s consideration of any state responsible inmate in a local facility, the Sheriff or Jail Administrator must provide the required inmate information from on the *COVID-19 Department of Corrections Form for Early Release* associated with this plan
- The Sheriff/Jail Administrator or designee electing to participate in the Early Release Plan will send the *COVID-19 Department of Corrections Form for Early Release* and a current *Exemplary Good Time (EGT)/Judicial Good Time (JGT)/ Class Level Evaluation 830\_F4* for identified state responsible inmates to the Director of Offender Management Services.
- Offender Management Services staff will review the documentation and determine the state responsible inmate’s eligibility.
- Community Release Unit staff will notify the Chief P&P Officer of the supervising district to confirm the state responsible inmate’s home plan when feasible.
- The Chief P&P Officer will ensure the state responsible inmate has a viable home plan. P&P Staff will investigate and if appropriate, approve the plan.
- Court and Legal staff will coordinate with Community Release Unit staff to set the release date for each approved state responsible inmate.
- Court and Legal staff will generate a legal update and notify the Community Release Unit and the local correctional facility.
- Community Release will prepare the release documents, forward the state responsible inmates release documents to the local correctional facility, and make the required notifications of the inmates pending release.
- Local correctional facility staff will review the release documents with the state responsible inmate, obtain the inmate’s signature on these documents, and return the signed release documents to the Community Release Unit.
- Local correctional facility staff will prepare the state responsible inmate for release.
- The ultimate eligibility decision regarding whether to release a state responsible inmate held in a local correctional facility in accordance with this plan, will be made by the Director of Corrections or his designee based on all relevant information. A copy of the release decision, pursuant to this plan, will be provided to the local correctional facility

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

Any state responsible 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 state responsible 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 state responsible 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.”

State responsible inmates held in a local correctional facility who are 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 as provided by the local correctional facility. The documents to be included are available on the Department of Corrections website at <https://vadoc.virginia.gov/media/1510/reentry-resource-packet.pdf> and will be provided to the inmate by the local correctional facility.

## **Appeal Process**

Any inmate appeal from a state responsible inmate held in a local correctional facility 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 state responsible inmates held in a local correctional facility from incarceration. State responsible inmates held in a local correctional facility must submit their appeal directly to the Sheriff or Jail Administrator addressed to the Director of Corrections using the *State Responsible Inmate Appeal for COVID-19 Early Release* form associated with this plan. The local correctional facility will document receipt of the form and forward the appropriate documentation to DOC for a determination.