Response to Public Feedback – Release to Furlough Without Approved Housing

Annie Ramniceanu; Corrections:

1. SFI status should be verified by Central Office Heath Services Operation Director or designee. And policy should match case staffing of SFI timelines (180 days prior to projected release.)
    - There is no mention of SFI in the proposed Rule, or case staffing timelines; however, when we do promulgate a DOC internal policy to guide the Rule, we will be sure to consult you.

Joshua Davis; Groundworks VT:

2. Would there be a way to notify Groundworks of folks exiting in the community that may seek our services?
    - This is already happening in cases where an offender is eligible for those services. Offenders eligible under this status still go through release planning with their caseworkers as part of the Case Management policy.

Jan Demers; CVOEO:

3. Releasing offenders on furlough without 'approved housing' in place may significantly increase the potential recidivism of a released offender. This is due in part to the shortage of affordable rental units in VT (specifically in Chittenden County) and a severe deficiency in offender transitional rental units. The majority of landlords (including CHT and BHA) do not rent apartments to many of the released offenders with whom I have been working. Additionally, many of the released offenders are not able to secure adequate employment. Without income, permanent and stable housing is not even possible. Offenders should be supported through their re-entry into the community by making certain that they have secured employment and transitional housing prior to their release. To facilitate this option, a Housing Case Worker from one of the area agencies could be assigned to work with the incarcerated offender to develop his or her housing plan and complete housing applications (whenever possible) and options prior to the offender's release. Classes in tenants' rights and responsibilities, credit report repair and budgeting should be completed by offenders who are approaching their release date. It would be ideal if the classes could be conducted prior to their release. Housing Case Workers or Educational workers would need security clearance and complete DOC training with regard to the correct and appropriate behavior that each Case Worker is required to follow within the facility.
    - Offenders receive release planning as part of their Case Management. Caseworkers work with offenders to line up appropriate and available supports and services in the community, including securing housing.

Sarah Carpenter; VHFA:

4. From the housing communities' point of view and our state policies to reduce homelessness, releasing directly into homelessness or shelter does not seem like a reasonable policy. The Housing First model that has been so successful with other hard to house populations should be available for corrections offenders
    - This Rule is being promulgated under the instruction of the Legislature; DOC does not have the authority to not write this Rule, and we cannot hold offenders solely for lack of housing per the statute.

Jennifer Stewart; CVOEO:

5. It seems like the Rule will give offenders the choice of remaining incarcerated, or exiting to homelessness. Although I applaud DOC for giving people a choice, as someone that works with homeless people it seems a bit cruel. My biggest concern would be people that exit DOC directly to the streets. People would need to adjust rapidly from living in a place where every one of their needs are met, to living in a place where they need to literally survive outside. In my experience, there are very few people that are able to do this successfully without having significant impact on their overall well-being and functioning. Ideally, if they decided to exit to homelessness, arrangements could be made while they are still incarcerated to get them into a local shelter or DOC transitional housing program. Teaming up with either of these programs would ensure coordination of services, at some level of supervision, and accountability for the client. I think if the Rule passed it would be essential for their 'housing plan' to include some kind of back-up plan incase the client soon realizes living on the streets is not what they thought it might be.
    - This is already happening in cases where an offender is eligible for those services. Offenders eligible under this status still go through release planning with their caseworkers as part of the Case Management policy. I am not sure if plans specifically include any backup plan, but housing plans are offender driven and nothing bars then from considering a backup plan.
6. I also wonder if this Rule change would change something that is currently in place. Currently, if someone on furlough loses their residence, they return to incarceration. I have seen this be a problem for people who either have issues with their landlord or roommates. It seems that whomever the offender is living with can simply call DOC, say the offender has no housing, and the offender gets picked up. This really disenfranchises them as it undermines their rights as a tenant. Often these situations seem to create crisis' and more trauma and more work on the part of DOC getting them back in jail when in reality they may have been able to make other arrangements, and with greater ease, out in the community.
    - If someone on furlough loses their residence, DOC works with that person to find other housing; a return to a facility will generally happen if no other housing can be secured.

7. Also, if they are on furlough they are automatically disqualified from receiving any Housing Opportunity Grant funding towards rental arrears or security deposit since they are technically housed. It would be great if this could change and these clients that are trying to improve their situation could qualify for this financial assistance.
    - Regarding the Housing Opportunity Grant, that grant is dictated by federal standards and practices and therefore we have no control over who is eligible.

Suzi Wizowaty; VCJR:

8. VCJR urges DOC to limit restrictions on release at an inmate's minimum to the two factors that can be objectively assessed: (1) whether or not the offender has completed any required programming *related to his or her crime and sentence*, and (2) whether the offender has a major disciplinary report that suggests a risk to public safety.
    - Thank you for your feedback, however DOC disagrees that these two factors alone would be sufficient to ensure that the safety and security of inmates and the community would be met.
9. We strongly urge that DOC support changing the statute to include violent offenders who have met their minimum sentences, and hold them to the same accountability standards for the same reasons outlined above: in every case, the court has set a minimum sentence for a reason.
    - DOC has no control over the statute; that is a legislative concern that must be addressed by them. This Rule and feedback are not the appropriate place for DOC to declare or deny support for changing a statute.

Mairead O'Reilly; Vermont Legal Aid:

10. Vermont Legal Aid (VLA) believes that the Department of Corrections (Department) should replace Section (2) of the Proposed Rule with Condition (6) in the Interim Memo on Release to Unapproved Housing-Furlough, Effective 2/7/20161 or Condition (4) of the Act 43 Sec. 4 Community Housing Plan Report, October 2015.2 It is unclear why the Department needs to replace the objective list of considerations laid out in the Interim Memo and the Act 43 Report with a longer and more subjective list of considerations laid out in the Proposed Rule. Applying the considerations in the Proposed Rule will likely, in practice, prevent or delay the release of eligible offenders. Considering the purpose of Act 43 to address the problematic "growing number of nonviolent offenders being held past their minimum sentence," the shorter list of objective conditions laid out in the Interim Memo or in the Act 43 Report aligns more closely with that legislative intent.
    - Thank you for your suggestion, however DOC feels the language used in the Proposed Rule is more aligned with the intent of the legislature.
11. In the alternative, VLA recommends the following edits in Section (2) of the Proposed Rule: Change: 2(a)(i) from: *The offender shall provide a housing plan to his or her caseworker, who shall record this housing plan* to *The offender and his or her caseworker shall create a housing plan, which shall be recorded in the offender's case plan. Lack of a housing plan shall not be grounds to delay release*. Vermont Legal Aid believes that while a housing plan is a useful tool, offenders will likely need assistance from their caseworker to create it. To the extent that offenders are unable to successfully

create a plan, their release should not be delayed. If Case Management Directive 371.02 applies here, it would be helpful to cross-cite and explain how this relationship and work will impact the housing plan.

- The housing plan, while largely driven by the offender, is something the offender's caseworker will work with them on; we feel the suggested language changes are focused on semantics. Staff are given additional instruction around release planning and planning for housing in the Case Management policy, which they are responsible for being familiar with and are held to.

12. Remove: *The offender has any physical or mental conditions that may be exacerbated by the fact that the offender may be rendered homeless by such release.*
    - This application of this section will not result in inmates with disabilities "having furlough taken away from them." The Rule sets forth criteria DOC may consider when determining whether to grant furlough; it does not address the revocation of furlough already granted. DOC's medical services contractor employs licensed physicians (including a psychiatrist), APRNs, nurses, and qualified mental health professionals that address medical issues, such as whether inmates have a disability. DOC disagrees that these licensed health care professionals are not trained to assess disabilities or determine whether an inmate's disability may be exacerbated by his/her release from incarceration to homelessness. Considering an inmate's mental and/or physical condition when determining whether it is in his/her best interest to be released from incarceration to homelessness does not violate the ADA or Vermont's Public Accommodations Act.
13. Change: 2(c) from *The absence of housing will likely unreasonably interfere with the offender's ability to reintegrate into the community, obtain employment, or to comply with other conditions of supervision appropriate for the offender's furlough* to *The absence of housing will unreasonably interfere with the offender's ability to comply with the conditions of supervision appropriate for the offender's furlough.* Lack of stable and safe housing often interferes with employment and reintegration and can complicate these processes. This alone should not justify continued incarceration. The Department should consider only whether an offender would be unable to comply with conditions of supervision.
    - Generally, employment is a condition of release, which is why it says '..or comply with other conditions of supervision…'
14. VLA believes that the Department should replace Section (3) of the Proposed Rule with Conditions (1) and (3) in the Interim Memo on Release to Unapproved Housing- Furlough, Effective 2/7/2016 or with conditions (1) and (3) of the Act 43 Sec. 4 Community Housing Plan Report, October 2015. It is unclear why the Department needs to replace the objective list of considerations in the Interim Memo and in the Act 43 Report with a longer subjective list of considerations laid out in the Proposed Rule. Applying the considerations in the Proposed Rule will likely, in practice, prevent or delay the release of eligible offenders. Considering the purpose of Act 43 to address the problematic "growing number of nonviolent offenders being held past their minimum sentence," the shorter list of objective conditions laid out in the Interim Memo or in the Act 43 Report aligns more closely with that legislative intent.

- DOC feels this is again, an issue of semantics; subsections a-d of Section 3 in the Proposed Rule are all criteria that match criteria laid out in the Interim Memo. While the specific wording is not identical, the intent behind the criteria is the same in both documents.

15. In the alternative, Vermont Legal Aid recommends the following edits to Section (3) of the Proposed Rule: Change 3(1) from *In finding whether the release of an offender without suitable housing will be consistent with the maintenance of public safety, DOC may consider whether:* to *When applying 28 V.S.A. §808(f), an offender shall not be denied furlough solely for lack of housing when all of the following conditions are satisfied:*
    - Thank you for your comment, however we feel the language used in the Proposed Rule better articulates the intent of what DOC is measuring, which is the maintenance of public safety.
16. Change 3(a) from *The offender has served at least his/her minimum sentence for a nonviolent misdemeanor or felony, and has completed, to the satisfaction of DOC, risk reduction programming as required by DOC policies* to *The offender has served at least his/her minimum sentence for a nonviolent misdemeanor or felony, and has completed risk reduction programming as required by DOC policies*
    - We disagree that the risk reduction programming just needs to be completed and the language 'to the satisfaction of DOC' is not necessary; there is a difference between completion and satisfactorily completing a task and DOC wants to be clear in that distinction. DOC uses this distinction to weigh an individual's readiness for a community supervision status.
17. Change 3(c) from: *The offender has been convicted of any additional offense while serving his or her current term of conviction* to *The offender has been convicted of a felony offense while serving his or her current term of conviction.* This suggestion is based on the Interim Memo published by the Department on February 17, 2016.
    - This was a conscious change to ensure various violent misdemeanors, such as domestic violence or sexual assault, were captured. DOC felt the Interim Memo didn't capture the full intent of the criteria, which is why the Rule language was adjusted.
18. Change 3(d) from: *The offender has been charged with any 'Major A' disciplinary violations while in the custody of DOC* to *the offender has been found to have committed a violent 'Major A' disciplinary violation (limited to Major A Violations 1-5 and 12) in the previous 6 months, while serving his or her current term of conviction.*
    - Changing language to: *It has been determined that the offender has committed any 'Major A' disciplinary violations while in the custody of DOC.*
19. Delete 3(e): *During his/her current term of incarceration, the offender has committed any other major or minor disciplinary violations which were specifically the result of violence against any person or property.* This provision is overbroad and would allow DOC to consider minor violations, such as offender hygiene, which are not predictive of potential public safety risks.
    - The subsection provides that DOC may consider any major or minor disciplinary infraction that were the result of violence against person or property, which would be an appropriate indicator of potential public safety risks.