

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Parole Board TITLE NUMBER: 92

CITE AUTHORITY: W.Va. Code §§ 62-12-13 and 29A-1-3(b)

RULE TYPE: PROCEDURAL x INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code § 29A-1-3(b) exempts the Parole Board from the provisions of Chapter 29A

AMENDMENT TO AN EXISTING RULE: YES x NO _____

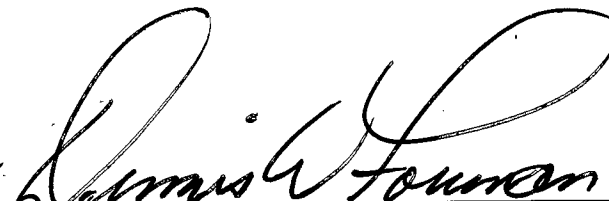
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Procedural Rules of the West Virginia Parole Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 22, 2010


Authorized Signature

**TITLE 92
PROCEDURAL RULE
WEST VIRGINIA PAROLE BOARD**

**SERIES 1
WEST VIRGINIA PAROLE BOARD PROCEDURAL RULES**

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WEST VIRGINIA
SECRETARY OF STATE

§92-1-1. General.

1.1. Scope. -- These rules and regulations establish procedures and criteria to be employed by the Parole Board when considering inmates incarcerated by the West Virginia Division of Corrections for parole and in granting parole and establishing conditions therefor; and in revoking the parole of those inmates who violate the conditions aforementioned.

1.2. Authority. -- W. Va. Code §62-12-13-(c).

1.3. Filing Date. -- January 20, 2010

1.4. Effective Date. -- March 22, 2010

1.5. Purpose. -- The general purpose of these rules and regulations is to establish procedures and criteria whereby the West Virginia Parole Board shall discharge its duties and exercise the powers described and reserved to the Board by the W. Va. Code, §§62-12-13; 62-12-14; 62-12-19. Accordingly, these rules are hereby designated as procedural rules in accordance with W. Va. Code §29A-1-2(g). These rules shall be filed with the legislature or its legislative rule making committee and in the State Register as required by W. Va. Code § 29A-1-3.

1.6. Repeal and Replace. -- This rule repeals and replaces 92 C.S.R. 1, "West Virginia Board of Probation and Parole Procedural Rules" effective July 15, 2006.

§92-1-2. Definitions.

2.1. The word "Board" as used herein shall mean the West Virginia Parole Board.

2.2. The word "Member" as used herein shall mean any member of the Parole Board.

2.2.(a) "Presiding Member" shall be a Parole Board member designated by the Chairman to serve as the Presiding Member over a specific panel.

2.3. The term "Parole Officer" shall refer to an employee of the West Virginia Division of Corrections who is charged with the supervision of the parolee during his or her release on parole and with the enforcement of the terms and conditions of parole.

2.4. "Panel" shall refer to one of the three panels established in Section 3.2 below.

2.5. The word "violation" shall refer to a breach by the parolee of any term or condition of release upon parole.

2.6. The word "Division" shall refer to the West Virginia Division of Corrections.

2.7. The word "institution" shall refer to the following: the Mount Olive Correctional Complex, the Huttonsville Correctional Center, the Pruntytown Correctional Center, the Denmark Correctional Center, the Ohio Correctional Center, the Lakin Correctional Facility for Women, the McDowell County Correctional Center, the Stevens Correctional Center, the Martinsburg Correctional Center, the Northern Regional Jail and Correctional Facility, the Beckley Correctional Center, the Charleston Work Release Center, the Huntington Work Release Center, the St. Mary's Correctional Center, the Anthony Correctional Center or any other location designated by the State of West Virginia as a correctional facility including regional jails.

2.8. The words "Deputy Commissioner" shall refer to the Deputy Commissioner of the Division of Corrections or to such other employee thereof designated by the Commissioner of Corrections.

§92-1-3. Board Decisions.

3.1. Rule Interpretation.

The Parole Board reserves for itself the authority to interpret these rules or any other rule or policy directive it may issue.

3.2. Method of Decision.

The Board shall sit in panels of three members for the purpose of conducting hearings and making determinations concerning the release of any inmate on parole, conducting hearings and making determinations regarding the revocation of parole, considering any eligible parolee for release from further supervision and discharge from parole, conducting parole interviews and conducting any hearing. Two members of any panel shall constitute a quorum for the conducting of business. Procedural and evidentiary matters, such as motions to continue and decisions to admit or exclude evidence and other non-dispositive matters shall be made by the presiding member.

The Chairman will designate the members of each panel and will assign each panel such matters as the Chairman deems proper.

No inmate shall be granted parole without the consent of two members, and no parolee shall have his or her parole revoked, rescinded, or be released or discharged from parole without the consent of two members of the panel hearing his or her case. All communications either by public service or letter form, regarding complaints or requests sent to the Parole Board or more particularly to the Chairman will be reviewed by the Chairman of the board. Upon review if found that the hearing had questionable interviews or improper documentation the Chairman will attempt to correct the error and at the discretion of the Board Chairman may grant the inmate a earlier interview to rectify any impropriety

of the Parole Board or the legality of the Members actions. The inmate/parolee's presence shall be required on all proceedings unless the inmate/parolee's conduct becomes so unruly as to impair the security and order of the proceedings and it becomes necessary for the presiding member to order his or her removal from the proceedings.

3.3. Privacy of Decisions

All deliberations and votes of each panel shall be made in private.

§92-1-4. Eligibility for Parole Consideration.

4.1. Eligibility Based on Time Served

a. Any inmate, in order to be eligible for consideration for parole, must meet the following prerequisites:

1. If the inmate is serving an indeterminate sentence, he or she must have served the minimum term of the sentence.

2. If the inmate is serving a determinate sentence, he or she must have served one-fourth of the sentence.

3. If the inmate is serving a sentence designated in the committing court's sentencing/commitment order as "Life with Mercy", and the crime is not First Degree Murder, he or she must have served ten years of the sentence.

4. If the inmate is serving a sentence designated in the committing court's sentencing/commitment order as "Life with Mercy" for First Degree Murder, and the crime occurred prior to June 10, 1994, he must have served ten years of the sentence. If the crime occurred on or after June 10, 1994, he or she must have served fifteen years.

5. If the inmate is serving a sentence designated in the committing court's sentencing/commitment order as "Life with Mercy", and he or she has been convicted of felony crimes twice before, he or she must serve fifteen years of the life sentence.

This provision shall apply regardless of the crime for which the life sentence was imposed, unless the crime is first degree murder or second degree murder or a violation of section three [61-8B-3], article eight-B, chapter sixty one of the West Virginia Code, and it is determined, as provided in section nineteen [61-11-19], article 11, chapter sixty-one, that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of section three, article eight-b of said chapter, or has been so convicted under any law of the United States or any other state for an offense which has the same elements as any offenses described in this subsection, in which case the inmate is not eligible for parole.

6. If the inmate is serving a sentence for a drug offense and the committing court's order designated that the crime occurred within 1000 feet of a school or school property, he or she must have served three years. (W. Va. Code § 60A-4-406).

7. Notwithstanding any other provisions herein, if an inmate is sentenced under a court order showing that he committed or attempted to commit a felony with the use, presentment or brandishment of a firearm, the inmate shall be eligible for parole consideration in accordance with the following:

1. If the inmate so committed or attempted to commit the crime of robbery as defined in Section 62-2-12 of the Code, he or she shall be eligible for parole either when he or she has served five years of the sentence or when he has served one-third of his determinate sentence.

2. If the inmate so committed or attempted to commit any other act, and was convicted of a felony under any section of the Code, other than 62-2-12, then he or she shall be eligible for parole after he or she has served three years of the sentence or the maximum of the sentence, whichever is less.

3. The provisions of this subsection will apply only to those inmates who were convicted of their felonies after August 1, 1981. Inmates convicted of their offenses before

that date shall have their eligibility determined by subsections (1), (2), (3) and (4). Resolution of any dispute over the applicability of this subsection shall be made by reference to Code, Section 62-12-13(a)(1)(B).

8. If an inmate is serving two or more sentences concurrently, he or she shall be eligible for parole consideration after he or she has served the longest of the minimum terms.

If one of the sentences is a determinate sentence, then he or she shall serve one-fourth, (five years or one-third of a definite sentence if the firearm statute is applicable), of that sentence in order to be eligible for parole consideration, providing that such is longer than the minimum sentence for any concurrent indeterminate sentence.

Examples:

An inmate serving a 1 to 10 year sentence and a 5 to 20 year sentence concurrently, will be eligible for parole after serving 5 years.

An inmate serving a 3 to 18 year sentence concurrently with a determinate sentence of 20 years, shall serve one-fourth of the 20 years, (5 years) or one-third (6 years and 8 months, if the firearm statute applies), before being eligible for parole.

9. If an inmate is serving consecutive sentences, the time of parole eligibility shall be computed by adding together the minimum terms of the sentences.

If one of the sentences is a determinate sentence, then parole eligibility shall be computed by adding a number equal to one-fourth of the determinate term, (or one-third if the firearm statute is applicable), to the minimum term of the other sentences.

If the inmate is serving two determinate sentences consecutively, then parole eligibility shall be computed by adding a number equal to one-fourth, (or one-third if the firearm statute is applicable), of one determinate term to a number equal to one-fourth, (or one-third if the firearm statute applied), of the second term.

Examples:

An inmate serving a 1 to 10 year sentence consecutively with a 3 to 18 year sentence is parole eligible after serving 4 years.

An inmate serving a 3 to 18 year term consecutively with a determinate sentence of 20 years must serve 8 years (or 9 years and 8 months if the firearm statute applies.)

An inmate serving two consecutive determinate sentences of 30 years apiece must serve 15 years (or 20 years if the firearm statute applies.)

10. When a parolee has violated the conditions of the release on parole by confessing to, or being convicted of: treason, first or second degree murder, armed/aggravated robbery, rape, or first degree sexual assault, sodomy, or incest, he shall be returned to a correctional center of this State to serve the remainder of the maximum sentence, during which remaining part of the sentence he or she shall be ineligible for further parole.

b. Rules concerning parole eligibility shall not be interpreted to delay the actual discharge of sentence and release from the institution. If an inmate has reached the maximum discharge date by benefit of Good Time, awarded pursuant to W. Va. Code § 28-5-31, but has not reached parole eligibility, then he or she shall be discharged.

c. An inmate who is serving a sentence designated in the committing court's sentencing/commitment order as "Life" or "Life without Mercy" shall not be eligible for parole.

4.2. Eligibility Based on Institutional Conduct.

a. An inmate shall lose parole eligibility if found guilty of violating any Class I or Class II institutional disciplinary rule at any time in the month of the scheduled parole interview or in the three months prior thereto.

An inmate's loss of parole eligibility shall be temporary; the inmate shall have his or her parole eligibility postponed until the fourth month following the month in which the rule violation occurred.

b. No inmate who is incarcerated in punitive segregation, as distinguished from administrative segregation, shall be eligible for parole. Such inmate shall become eligible in the first full month following the month in which he or she is released from punitive segregation, except as otherwise provided for in the preceding section.

4.3. Detainers.

An inmate, who is subject to a detainer filed by authorities of any state or of the United States, will be eligible for parole interviews, if said detainer is specified to be at least one year of incarceration or at the discretion of the Parole Board.

However, if parole is granted to such an inmate he or she shall be paroled to the detainer. He or she shall not be released to parole supervision without the express written consent of the authorities who filed the detainer.

Any person charged with escape from the custody of the Commissioner of Corrections shall not be released from custody while the prosecution of the alleged offense is pending.

4.4 Community Safety: All persons seeking parole must satisfy the Parole Board that he or she will not constitute a danger to the community.

§92-1-5. Interviews of Inmates.

5.1. Interview schedules

Inmates who become eligible for parole shall be given an interview by a panel of the Board.

Due to the heavy caseload of the Board and the difficulties of constant travel by members, the exact date and time of any interview shall be at the sole discretion of the Board.

Interviews may be conducted by means of video teleconference in compliance with statutory requirements of W.Va. Code §62-12-13(j).

No inmate shall have the right to an interview on any particular day. However, the inmate shall have the right to an interview within a specific month in accordance with the following:

a. Initial Interview - When an inmate first becomes eligible for parole, he or she shall be interviewed by a panel of the Board during the month in which he or she becomes eligible.

Example:

An inmate who was sentenced to a term of 3 to 18 years with an effective sentence date of January 14, 1995 shall have an interview scheduled for some date during the month of January 1998.

b. An inmate who is not granted parole following the initial interview, shall be scheduled for an additional interview no more than twelve months following the month of initial eligibility except for inmates with life sentences who may be subject to extensions of this period.

Subsequent interviews will be scheduled at twelve month intervals, except as otherwise provided for herein.

An inmate who is serving a sentence designated in the committing court's sentencing/commitment order as "Life with Mercy" shall be scheduled for an interview after serving 10 years (if the crime occurred prior to June 10, 1994); or after serving 15 years (if the crime occurred on or after June 10, 1994).

Subsequent interviews may be scheduled at up to 36-month intervals in compliance with the provisions set forth in subsection (d) of section 8 of these Rules.

The panel, for any reason, may advance the time of any interview, providing all other rules are complied with.

5.2. Notice to Inmate

The Board shall notify inmates of the date of their individual interviews by issuance of a monthly list.

The list shall give the name of each inmate, by institution, who is to receive an interview in a given month, together with the date of such interview.

The list shall be issued by the Board on or before the first day of the month prior thereto.

The list shall be sent to each institution, and all inmates whose names appear on it shall be notified of the date of their individual interview by employees of the institution.

5.3. Notice to Officials

Written notice of each interview shall be sent by first class mail to the sentencing judge, the prosecuting attorney, and investigating or arresting police officer so that they may comment on the appropriateness of the granting of parole.

The notice shall be mailed at least ten working days prior to the interview.

If the sentencing judge is no longer on the bench, written notice will be sent to the chief judge in that judicial circuit.

5.4. Notice to Victims; Victims Right to be Heard

Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson, or a sexual offense against a minor, the prosecuting attorney shall prepare a "Parole Hearing Notification Form" which shall contain the names, addresses and telephone numbers of the

victims of the crime for which the offender was sentenced.

At least forty-five days prior to the date of a parole hearing, the Board shall notify those persons listed on the "Parole Hearing Notification Form" of the date, time and place at which a parole hearing will be held. Such notice shall be sent by certified mail, return receipt requested.

The notice shall state that the victims of the crime have the right to submit a written statement to the Board and to attend the parole hearing to be heard, with or without the inmate present, regarding granting parole to the inmate. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

The panel of the Board shall inquire during the parole hearing as to whether the victims of the crime or their representatives are present. If so, the panel shall permit those persons to speak.

If the panel grants parole, it shall immediately set a date for the inmate's release and shall immediately notify the victims that parole has been granted and indicate the date on which the inmate is to be released.

5.5. Time and Place of Interview

All parole interviews shall be held at the inmate's place of confinement. If deemed in the interest of economy and expedience or for any other special circumstance, the Board may designate another secure location.

Interviews may, in special circumstances, be held at a hospital or at the discretion of the Board.

Individual inmates shall not be scheduled in advance for specific times, unless the victim or victim's family, as mentioned in Section 5.04, has requested to attend the hearing. The panel of the Board on a given day shall commence with interviews at a prearranged time and thereafter shall interview each inmate scheduled for that day in turn unless the Parole Board

deems it necessary to change the order of the schedule. If necessary, due to time constraints, interviews may be continued to succeeding days. Parole interviews are open to the public except insofar as restrictions on attendance may be required for security reasons or institutional management considerations.

5.6. Consideration of Documents at Interviews

a. At the interview the panel will consider any of the following documents, which it has obtained from appropriate sources:

1. A current authentic copy of the inmate's criminal record issued by either the West Virginia Department of Public Safety, the Federal Bureau of Investigation, a criminal justice authority of another state, or other reliable sources such as a pre-sentence report or a post-sentence report.

2. Reports from the institution concerning the inmate's work record, participation in therapeutic, treatment and educational programs, and overall conduct.

3. Reports of the inmate's conduct while incarcerated, to include the record of any and all violations of Class I or Class II institutional disciplinary rules, proved and disposed of, and the sanctions imposed therefore;

4. Reports prepared by institutional authorities concerning any improvement or other changes noted in an inmate's mental or moral condition while incarcerated, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him, toward the prosecuting attorney who convicted him, toward the law enforcement officers who arrested him, toward the crime for which he is under sentence, toward his previous criminal record and when applicable, toward the parole officer and toward any or all Parole Board members.

5. Reports submitted to the panel by institutional authorities concerning physical, mental or psychiatric examinations of the inmate

conducted by either the Division or other appropriate agencies or professionals.

6. Sections of pre-sentence or post-sentence investigation reports, which state the sentiment held by law enforcement officers, prosecuting attorneys, or other public officials and citizens from the county where the inmate was sentenced or from the community in which the inmate resided.

7. Sections of pre-sentence or pose-sentence investigation reports which state the facts and circumstances of the crime for which the inmate has been convicted.

8. Records pertaining to any previous release of the inmate on home confinement, probation or parole.

9. Have an approved home plan that was investigated by the Division of Parole Service, reviewed and approved by the parole board.

b. The inmate shall be supplied with copies of all documents to be considered by the panel, with the exception of those described in subsection (5) and (6) of the preceding section or any document that interferes with security considerations.

These copies shall be delivered to the inmate by employees of the institution at least fourteen days prior to the date of the interview.

At the time these copies are delivered, the inmate shall be asked to sign a statement acknowledging receipt of same. The date of delivery shall be noted and the executed acknowledgment shall be sent to the Board.

c. The panel may conduct the interview without any of the aforementioned documents and reports, provided that a written statement indicating the reason for the panel deciding to proceed without them, is prepared, signed by all interviewing members, and placed in the inmate's file.

However, in the case of a prisoner who is incarcerated because such prisoner has been

found guilty of, or has pleaded guilty to a felony under the provisions of section twelve [§ 61-8-12], article eight, chapter sixty-one of the West Virginia Code or under the provisions of article eight-b or eight-c [§61-8B-1 et seq. or 61-8C-1 et seq.] of chapter sixty-one (sex crimes), the Board may not waive the report required by subsection (5) and the report shall include a study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program.

5.7. Conduct of the Interview

a. The interview will be conducted in an informal manner. The purpose of the interview is to allow the inmate to respond to facts contained in the documents and reports, to offer reasons why he should be granted parole, and to give the panel an opportunity to observe the demeanor of the inmate and pose questions to him or her. Member shall review all aspects of the inmate's criminal record, prison conduct and achievements and all areas of the interview process should be considered prior to a board decision all hearings shall be fair and appropriate and the decision based on the totality of the findings. The proceedings in the interview shall be recorded by magnetic tape, stenography, or other means of equivalent competence. An interview by video teleconference may be utilized in compliance with the requirements of subsection (j) of W. Va. Code §62-12-13.

b. During the course of the interview, the panel shall:

1. Interrogate the inmate to ensure copies of all documents to which the inmate is entitled under Rule 5.06, were received.

If the panel learns from such inquiry that the inmate has not received all such documents, it shall give the inmate the choice of either proceeding with the interview, giving him an opportunity to learn the contents of a comment upon the documents not received, or postponing the interview until the next month.

2. Allow the inmate an opportunity to comment upon information contained in the documents or reports which the panel shall consider, and rebut any information, which the inmate believes, is false or inaccurate.

In order to so rebut or to present additional information which the inmate believes is relevant to parole consideration, the inmate may present to the panel documents, affidavits or letters.

The inmate may also ask that the panel delay consideration of the case pending receipt of such documents, affidavits or letters if they are not available at the time of the interview. The Board or its panel has no responsibility for obtaining such information on the inmate's behalf.

Thereafter the panel shall allow the inmate an opportunity to make a statement as to why he should be granted parole, specifically as to why the panel should believe that if he were released on parole he could conduct himself in a lawful manner and that his release would not be incompatible with the best interests and welfare of society generally.

Members may ask the inmate any question which relates to the matters of fact raised in the documents or reports, by the inmate himself, or which concerns the inmate's personal or family life and has demonstrated bearing on the factors considered for a grant or denial of parole. All interviews or questioning shall be conducted fair and impartially and Board Members shall display professionalism and not project a bias or downgrading attitude.

c. Parole interviews are open proceedings. Any person who so desires may be present for the interview as space allows. However, no person in attendance may speak except with the permission of the panel.

d. Any person, including the inmate himself, who speaks without permission, or who disrupts the interview may be ordered to leave the room by the panel.

Any such action on the part of an inmate shall result in the loss of the hearing entitlement for at least four months.

§92-1-6. Factors in Decision.

The panel, in considering whether parole should or should not be granted to any inmate, shall consider the following factors:

6.1. Whether the inmate has been found guilty of violating any Class I or Class II institutional disciplinary rules, and

6.2. Whether the inmate has satisfactorily participated in institutional education, work, therapeutic or treatment programs, and has complied with the recommendations of the IRPP.

6.3. Whether the inmate has previously been on home confinement, parole or probation, and if so, how the inmate behaved thereon and the circumstances of any violations, and

6.4. The sentiment expressed by members of the community, victims of the crime committed by the inmate and criminal justice officials in the area where the crime occurred and in the area where the inmate lived prior to conviction, if any such expression be available, and

6.5. The facts and circumstances of the crime, and

6.6. The demeanor of the inmate during the interview and the attitudes expressed with regard to prior criminal behavior, to social morals and law, and

6.7. The inmate's prior criminal record, if any, and

6.8. The results of any available physical, mental or psychiatric examinations. Psychological exams must be conducted for sexual offenders and violent offender within 60 days of the hearings. Other inmates' crimes must have an updated exam within a 2 year period, unless otherwise requested earlier by the Board.

6.9. The panel will consider positive and negative factors in all the aforesaid areas and not confine its inquiry to particular areas to the exclusions of others.

6.10. The panel shall assess all factors together to determine whether:

a. The inmate can and will conduct himself in a lawful manner if released, and

b. Whether release is in the best interests of society considering public safety and rehabilitation goals.

6.11. The panel will not parole an inmate if the circumstances of the inmate's specific criminal act merit continued punishment, other factors notwithstanding.

6.12. The panel will consider the risk assessment performed upon the inmate as set forth in the Board's criteria for making such assessment.

6.13 The inmate must have a parole board approved home plan or hearing approved prior to home plan approval. At the parole board review and discretion.

§92-1-7. Waiver of Interview.

The inmate may waive a parole interview either by writing a letter setting forth the desire to do so, or by executing such waiver form as provided by the Board. Such waiver shall be made no later than thirty (30) days before the interview date unless special circumstances exist for a shorter period.

Upon receipt of either a letter or waiver, the Board will treat the inmate's case as a flat denial.

Additionally any refusal by an inmate to come before the Board on their scheduled hearing date will be considered a waiver of their interview and shall result in a flat denial by the Board. The inmate may also request, in advance and in writing, that the parole interview be postponed for one or more

months. The Board in its discretion may grant or deny a postponement.

§92-1-8. Decisions of the Panel.

The panel at the conclusion of an interview may decide to:

8.1. Grant parole, or

8.2. Grant parole with special conditions, or

8.3. Defer parole, or

8.4. Deny parole and schedule an additional interview at anytime within the next twelve months. If a majority of the panel, as set forth in section 3.2, shall determine that the inmate should have an additional interview prior to the expiration of 12 months, then the panel shall proceed to deliberate the length of time which shall elapse before the next interview. If a majority of the panel agrees on a specific period of time then that period of time shall be the period for the next interview. If the panel is unable to agree upon a period of time which is less than 12 months to schedule another interview, then the presiding member, after causing the same to be duly noted in writing, may poll each member of the panel who shall recommend a period of time between 0 and 12 months, and reach the average of the same by adding all recommendations and dividing by the number of members making recommendations. Once this average is reached, the panel shall again deliberate to determine if this average can be agreed upon. If the panel cannot thereafter agree on a date for a new interview, the matter shall be referred to the Chairman who, in his or her sound judgment shall schedule another interview prior to the expiration of 12 months.

With the exception of an inmate serving a sentence designated in the committing court's sentencing/commitment order as "Life with Mercy" in which case subsequent interviews may be scheduled at up to 36 month intervals. Such extension beyond 1 year shall be made only if the Board makes a case-specific individualized determination with reasons and findings on the record showing why such extension will cause no detriment or disadvantage to the inmate. An inmate receiving

such extension shall be entitled to submit information to the panel during that extension requesting an earlier parole interview.

The panel will inform the inmate of its decision in writing. After the interview, the panel may postpone its decision, deferring consideration until it receives additional information, which it deems necessary to its decision.

If the panel decides to deny parole, it shall notify the inmate by letter of the specific reasons for denial.

It may include among the reasons for denial, a statement of recommendation for future behavior that the panel believes may improve the inmate's likelihood of favorable parole consideration or improve the rehabilitation potential of the inmate.

If the panel decides to grant parole, it shall issue written notification thereof, specifying the grant decision and any Special Conditions of parole the Board deems necessary. The Parole Board's conditions will be strictly adhered to and will not be void by anyone other than the parole board itself. Additionally if other conditions are placed on the inmate by parole services, those conditions must be submitted to the Parole Board for its approval or denial. All submitted conditions must be in direct correlation with the penalties specified by law. Interpretation of the code will be followed and no adverse and improper sanctions will be placed on an inmate unjustified.

1 be §92-1-9. Rescission of Parole.

9.1. Grounds for Rescission

The Board may rescind any grant of parole made pursuant to these rules if the inmate commits any infraction of Class I or Class II institutional disciplinary rules after the interview and before the actual release from the institution, or if any information becomes available to the Board which contravenes the evidence the panel

used to reach the parole decision. Whereupon the panel shall immediately issue a notice of temporary rescission.

9.2. Procedures for Rescission

a. Upon receipt of a written report from the Division of Corrections that the inmate has committed any infraction of Class I or Class II institutional rules, or upon receiving information contravening the evidence used by the Board to reach the parole decision, the Board shall immediately issue a written hold to the institution and the inmate which shall serve as notice that the grant of parole is temporarily rescinded until such time as a rescission hearing can be held.

b. Within forty-five days of issuance of the written hold, a panel of the Board shall hold a rescission hearing at the institution, or other convenient location, for the purpose of determining:

1. whether the inmate was found guilty of violating an institutional Class I or Class II disciplinary rule, and if so, whether rescission is warranted; or

2. whether the new information, which contravenes the evidence, used to reach the parole decision, are accurate, and if so, whether rescission is warranted.

c. The inmate and the warden of the institution shall receive written notice of the time and date of the rescission hearing at least five days prior thereto. The notice shall set forth the grounds upon which rescission may be based.

d. The inmate may be represented at the rescission hearing by another inmate. The inmate may present witnesses, give testimony, and cross-examine all witnesses who testify against him or her.

e. Staff may be present at their own volition to testify; the panel may also require the presence of staff as circumstances dictate.

f. Institutional disciplinary reports regularly kept shall be adopted as reliable and

trustworthy evidence to prove the commission of a violation of institutional Class I or Class II disciplinary rules and the circumstances thereof, insofar as such are expressly described in the findings of fact of the Disciplinary Committee or Institutional Magistrate. However, the inmate may present evidence as to the circumstances of the violation or other mitigating factors.

§92-1-10. Revocation of Parole.

The Board by a panel may revoke the parole of any parolee who has previously been granted parole and who has not been discharged from supervision.

However, parole shall not be revoked unless a panel of the Board specifically finds that a parolee has violated a condition of parole which has been imposed either by law, the Board or the Division.

A court order finding a parolee guilty of any offense that occurred while he was on parole status is reliable evidence to support a revocation based on a new conviction.

The panel shall make a finding that the parolee has violated a condition only after it has conducted an evidentiary hearing, which shall be known as a revocation hearing.

§92-1-11. Prerequisites to Revocation Hearing.

11.1. Report of Charge

a. A panel of the Board shall convene a revocation hearing only if it receives from the Division:

1. A written report, which lists the specific conditions, the parolee is charged with violating together with the date of each alleged violation.

2. A written violation report detailing how each alleged violation occurred.

3. The date on which the parolee was served with written notice of the charges.

4. The date, if any, on which the parolee was placed in jail pursuant to the charge.

5. The date, if any, the parolee was released from jail on bond.

b. Additionally, if a preliminary revocation hearing was held by a Division hearing examiner, it shall be the responsibility of the Division to supply the Board with:

1. The date on which the preliminary revocation hearing was held by a Division hearing examiner, and whether for each charge the hearing examiner found probable cause.

2. A written report by the Division hearing examiner giving a complete summary of the contents of the preliminary revocation hearing, to include:

i. A summary of each of the charges in the order listed, to include, with respect to each charge, a summation of the testimony given, the exhibits entered into evidence, and the names and identity of those persons testifying.

ii. A written attestation by the hearing examiner as to the accuracy of such hearing summary.

3. Copies of any documents or writings admitted as exhibits at the preliminary revocation hearing.

c. In the event the parolee elects to waive the preliminary revocation hearing, it shall be the responsibility of the Division to supply the Board with:

1. A duly executed waiver of the preliminary revocation hearing.

d. The appropriate aforementioned documentation shall be received no later than the forty -fifth day after either the date on which the parolee received written notice of the charges, or the date on which the parolee was incarcerated, whichever occurred sooner.

However, the running of the forty-five day period shall be tolled by:

1. Any continuance which is sought and obtained by counsel for the parolee prior to the preliminary revocation hearing, or

2. The pendency of any criminal charge, which is also the basis of any charge of a violation of parole conditions. This subsection shall not be applied to toll the running of the forty-five day period for any other charge.

3. The absence of the parolee from the boundaries of this State for whatever reason, or

4. The escape or absconding of the parolee from the custody of a jail or the supervision of the Division.

The Division of Corrections shall provide a written statement to the Board or its panel explaining the facts and circumstances of any of the four aforementioned causes for cessation of the running of the forty-five day period.

11.2. Decision to Hold Hearing.

- a. Upon receipt of the aforementioned requisite documentation, a panel designated by the Chairman shall consider such and determine by vote whether to hold a revocation hearing and, if so, with respect to which charges.

Any charge on which the panel chooses not to hold a hearing shall be dismissed.

- b. If the panel chooses to hold a revocation hearing, it shall schedule a time, date and designate a location for the hearing.

The revocation hearing shall be held no later than the thirtieth day excluding weekends and holidays following the date upon which either:

the preliminary hearing is held in this State, or;

the parolee is returned to the custody of the Division of Corrections through Interstate Compact, or;

a written waiver of the preliminary hearing is executed.

- c. When the Board or its panel receives a report from the Division that indicates a parolee has been charged with a criminal offense, if the report is not accompanied by a certified copy of a criminal court order setting forth a verdict of guilty on the criminal charge, then the panel may defer making a decision on whether to hold a revocation hearing. However, such deferral shall be for the sole purpose of awaiting the outcome of any pending criminal proceedings, and the panel shall determine whether to hold a revocation hearing upon receipt of written information of the verdict rendered by the criminal court.

- d. Out of State parole violations, submitted through proper channels of the Interstate Compact Commission and received from the supervising Parole Officer in that reporting State, will be accepted on its face and direct testimony and submitted evidence will not be required from the reporting state.

11.3 Notice of Revocation Hearing.

Whenever the panel decides to schedule and hold a final revocation hearing, the panel shall issue a written notice. The notice shall set forth:

- a. The date, time and place of the hearing.

- b. The charges to be heard at the hearing and the conditions of parole which the charges allege the parolee violated.

- c. The parolee's right to be represented at the hearing by an attorney, his right to have an attorney appointed by the Circuit Court, and his right to speak on his own behalf, to stand silent, to have voluntary witnesses appear to testify on his behalf, to present documentary evidence, to confront and cross-examine witnesses unless the

panel finds good cause for not allowing such confrontation.

d. The panel shall send notice to the parolee and to his attorney, if the existence of one is known. The method of delivery shall be by facsimile to the attorney with a hard copy sent by first class mail. The parolee shall be served by the parole officer delivering a copy of the notice to the parolee. Notice shall be served at least five (5) days before the hearing whenever possible.

e. Notice of a revocation proceeding shall also be provided to any individual entitled to notice under section 5.4.

d. Upon receiving notice of an upcoming revocation hearing, the inmate or inmate's attorney is to advise the Parole Board if the charges will be contested or a guilty plea will be entered with mitigation. This will advise the Board and assist in scheduling of upcoming hearings.

§92-1-12. Representation by Counsel.

At the final revocation hearing the parolee may be represented by counsel who may be either an attorney or lay person.

If the parolee is indigent, he has the right to have an attorney appointed for him by the Circuit Court, as provided for in West Virginia Code, Section 62-12-22.

A continuance may be granted to allow the parolee to obtain counsel if he does not have counsel and desires the services of counsel.

§92-1-13. Procedure at Revocation.

13.1. Panel Decision

All revocation hearings shall be heard by a panel, as set forth in Section 3.2. At least two members of the panel shall be present in order for the panel to hear and rule upon any manner. No inmate may have his or her parole revoked without the vote of at least two members. In the event that a hearing is conducted by two members and the two members are unable to

agree upon a ruling, the transcript and record of the proceedings shall be reviewed by the third member, at a later time, the third member shall cast the deciding vote, after a review of the transcript and records. The panel may also entertain dispositive motions based upon the documentation and/or evidence presented. If the panel sustains a motion to dismiss, the proceeding shall be at an end, and the panel shall issue an order reflecting the motion and the ruling.

13.2. Parties at Hearing

The accused parolee and his counsel shall be present at all stages of the hearing. Either the parole officer who charged the parolee or another representative designated by the Deputy Commissioner shall be present to present evidence and proof of the charge(s).

13.3. Attendance of Witnesses.

Both the parole officer and the parolee shall be permitted to have witnesses. Witnesses may be excluded from the hearing except for giving testimony in compliance with Section 13.08 of these Rules.

13.4. Continuances.

Continuances may be granted by the panel or the Board Chairman, to the parole officer or the parolee for good cause. The hearing may be continued past the thirtieth day, excluding weekends and holidays, upon which either the preliminary hearing is held in this State, the parolee is returned to the custody of the Division of Corrections within this State, or a written waiver of the preliminary hearing is executed.

A motion for a continuance shall be made in writing at least two (2) days prior to the hearing date to prevent inconvenience to victims or others and unnecessary use of resources expended for travel and attendance by members and others. At no time, except in extreme emergency, will a continuance be granted that is made less than twenty-four (24) hours before any hearing.

The Board may refuse to grant a continuance if it determines there is not good cause to grant the motion.

Good cause shall include, but not be limited to: (a) the parolee's attorney's conflict with a scheduled court appearance, (b) the inability of a desired witness to appear at the originally scheduled hearing, (c) illness, or (d) inadequate time to prepare a defense or similar reasons applicable to Board members or staff.

13.5. Record of Hearing.

Final parole revocation hearings shall be recorded by magnetic tape or other reliable means.

13.6. Commencement of Hearing.

At the commencement of the hearing, the presiding member of the panel shall identify for the record, the name of the parolee, the date, time and place of the hearing, and the names of those present in the room.

The presiding member of the panel shall read aloud the charges to be considered at the hearing and the conditions, which the parolee is charged with violating.

13.7. Plea.

a. After reading each charge, the presiding member of the panel shall ask the parolee to plead either guilty or not guilty in his own words. If the parolee refuses to respond, the presiding member shall note such refusal for the record. A refusal to plead shall be considered as a plea of not guilty.

b. If the plea is guilty, the parole officer need not present evidence of the charge; the parolee shall be permitted to speak or otherwise present evidence in mitigation. The parole officer may present rebuttal evidence.

c. If the parolee pleads not guilty, the parole officer shall be required to present evidence tending to support the charge, following which the parolee may present evidence in his or her own defense. Proof of the

violation shall be by a preponderance of evidence as set forth in Section 13.10. Both the parole officer and the parolee shall be permitted to present evidence to rebut that of the other.

13.8. Witnesses and Testimony.

a. The parole officer, the parolee, or the presiding member may demand that all witnesses be excluded from the room except when called upon to testify.

b. All witnesses shall be placed under oath to tell the truth before testifying.

c. The parolee may cross-examine witnesses presented by the parole officer, including the parole officer himself, should he choose to testify.

The presiding member may rule that there is a justifiable fear of harm to an informant if he were to directly testify or if his identity were to be disclosed. The risk of harm must be demonstrated by an overt threat to the informant, by implicit threats, or by any circumstances, which would lead reasonable minds to believe that harm would be likely to result, then the parolee shall not be present during that witness' testimony.

The parole officer may examine all witnesses who testify and may cross-examine those presented by the parolee. The presiding member may ask questions of any witness at any time.

13.9. Rules of Evidence for Revocation Hearing.

a. Formal rules of evidence do not apply and the decision to hear or exclude evidence shall be at the discretion of the presiding member, who should not refrain from relying on the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

In any event the presiding member shall resolve concerning the admissibility of evidence in accordance with these rules:

b. Evidence may be excluded if it is:

1. Clearly irrelevant,
2. Redundant or repetitious, or
3. Evidence of a person's character, criminal record or habits, except as such is evidence of a witness' propensity for telling the truth, or except as it may be directly relevant to whether the parolee is guilty of the charges.

c. Hearsay evidence, as defined by the West Virginia Rules of Evidence shall not be admitted, except when:

1. It is both reliable and trustworthy in its source and is credible, or
2. It is evidence of a statement made by a person who has explicitly refused to attend the revocation hearing to testify, or
3. It is evidence of a confession or an admission made by the accused parolee or,
4. It is evidence of a recorded memorandum of a witness' statement who can no longer remember the statement or is unavailable to testify, or is a regularly kept business record or a public record or a statement against interest or,
5. It is hearsay evidence offered by the parole officer or other competent witness of the statement of a confidential informant. Such hearsay evidence shall not be admitted unless the presiding member of the panel is satisfied that there is a justifiable fear of harm to the informant if he or she were to directly testify or if his identity were to be disclosed and there are indications that such evidence is reliable and trustworthy or,
6. Such hearsay evidence would otherwise be admitted under the West Virginia Rules of Evidence or,
7. In the discretion of the presiding member, the panel may admit such evidence and subsequently assign to it such weight as is deemed proper, if any.

The presiding member of the panel may accept into evidence the hearsay testimony of the parole officer or other competent witness, and the affidavit of the informant, or a private examination of the informant, from which the parolee may be excluded if the justifications set forth in Section 13.8 are present.

d. Notwithstanding any other rule, documentary evidence may be admitted for the truth of the matters set forth in the document if:

1. The document is prepared by a person with direct knowledge of relevant facts, who is unable to appear to testify, provided that the document is accompanied by an affidavit signed by the author attesting to the document's authenticity and accuracy or there are indications that the document is reliable and trustworthy, or,
2. The document was prepared by and within the scope of duty of a public employee, excepting a parole officer, and was prepared at or near the time of the act, condition, or event, and the source of information and method and time of preparation was such as to indicate its trustworthiness, or
3. The document is a report from the Department of Public Safety or from a Laboratory Providing services to the Division of Corrections though a duly approved contract or from a recognized Laboratory Providing services to counsel for the offender which sets forth the results relating to scientific testing for identification and presence of alcohol, controlled substances, gunshot residue, firearms ballistics or other forensic testing.

e. Originals or certified copies of Interstate Compact Reports, Preliminary Hearing transcripts and findings, and correspondence from out-of-state parole officers, to include reports, letters or memorandums, may be submitted as evidence in the final parole revocation hearing. Those original or certified copies of the Interstate Compact Reports will be accepted on its face and direct testimony or submitted evidence will not be required by the reporting state.

f. The presentation of a certified copy of a court order is conclusive proof that the parolee is guilty of committing a crime. Proof of an arrest or indictment is not proof of the crime.

g. Proof of a charge of parole violation cannot be based upon hearsay evidence alone. If hearsay evidence of the type described in subsection (c) or (d) is offered by the parole officer as proof of a violation of a condition of parole, the parole officer must also offer some other reliable evidence, either direct or circumstantial, to prove the charge. Documentary evidence of the type described in subsection (f) is sufficient proof of a charge. All documents and other evidence pertaining to the charges must be submitted 5 days prior to the hearing date. Documents must be submitted to each participating party as well as the Parole Board.

h. The presiding member of the panel may strike or limit any questioning of witnesses which is abusive of or clearly intended to harass, intimidate or insult a witness.

i. If the charges being considered at the hearing include a charge relating to the commission of a felony for which the parolee is being criminally charged, the presiding member shall hear evidence of the current status of the criminal proceeding.

j. Telephonic or video conference testimony may be had by a witness for either the parolee or the Division. It shall be the sole responsibility of the party seeking to present such testimony to make all necessary advance arrangements to call such witness without undue delay. For purposes of this rule, that would mean making certain that there is a telephone with speaker phone capability at the hearing location and making certain that the witness is available on the other end of the telephone or video connection when the time for their testimony arrives. Any party desiring to call a witness by telephonic or video conference means shall disclose such the same to the panel and shall advise the presiding member of the

panel that they have made the necessary arrangements.

13.10. Burden of Proof.

The panel of the Board shall not order that parole be revoked unless it finds by a preponderance of the evidence submitted at the revocation hearing that the parolee violated a condition of parole. The burden rests with the parole officer to prove the parole violation. Where there are factual disputes on key issues in a parole revocation hearing, the panel shall set forth a statement on how and why the dispute was settled in a certain way to assist in judicial review.

§92-1-14. Waiver of Revocation Hearing.

14.1. The parolee may waive the final revocation hearing. He or she may also waive the five-day notice of the hearing. A waiver of the final revocation hearing shall be construed as a plea of guilty to the charge(s) and may result in revocation of parole.

14.2. The procedure for waiver of the final revocation hearing is as follows:

a. If the parolee desires to waive the final hearing, and is not represented by legal counsel, he shall inform the parole officer of his desire to waive; this must be done in writing via an executed waiver of the final hearing on the charge of parole violation.

b. If the parolee waives the final hearing, the parolee shall sign a waiver form. The parolee's signature on the waiver must be witnessed by two people, one of whom can be the parole officer.

14.3. In lieu of the above procedure, if the parolee is represented by legal counsel, his attorney shall inform the Board of his desire to waive the final hearing; this must be done in writing.

§92-1-15. Decision by the Panel.

15.1. The panel may decide the case by:

a. Finding the parolee not guilty of the charges and reinstating the parole, or

b. Finding the parolee guilty of one or more charges and reinstating the parole with or without additional special conditions, or

c. Finding the parolee guilty of one or more charges and revoking the parole.

d. At any time prior to a ruling on a revocation proceeding, the panel may decide to hold the proceedings in abeyance and release the parolee back to parole supervision for a specified period of time. If in the specified period of time, the parolee abides by his or her terms and conditions of parole, including any additional terms in which the panel may impose when holding the revocation proceeding abeyance, the revocation proceedings will be dismissed and the parolee shall be allowed to remain on parole. If the parolee should violate further conditions of parole during the abeyance period, the revocation proceeding shall be reconvened and further violation proceedings may be instituted.

15.2. The panel shall prepare a notice in which it shall state its decision with respect to each charge.

If the panel finds the parolee guilty of any charge it shall set forth in the notice a description of the evidence it considered in arriving at the finding of guilt.

The panel need not describe the evidence for those charges of which the parolee was found not guilty.

15.3. If the panel decides not to revoke parole, it shall send a notice to the parolee, his attorney, the parole officer and the Deputy Commissioner, advising of the decision.

15.4. Any person receiving notice of a revocation proceeding pursuant to Section 11.3 (e) shall be given notice of the panel's decision.

§90-1-16. Revocation Procedure.

16.1. If the panel decides to revoke the parole, it will issue a formal Order of Revocation, copies of which shall be forwarded to the Division of Corrections, the Records Clerk at the parent institution, the sheriff/administrator of the facility holding the parolee, the parolee's attorney, and the parole officer, advising of the decision. It shall be the responsibility of the Division to supply the parolee with a copy of the Order of Revocation of Parole.

16.2. The formal Order of Revocation issued by the panel shall state:

a. The parolee's name and DOC number.

b. The effective sentence date(s), offense(s), county or counties of conviction and sentence(s) for which the parolee was incarcerated at the time he or she was granted parole.

c. The date the parolee was granted parole.

d. The charges of parole violation and the evidence relied on for each of the charges where a finding of guilt was made.

e. The new parole eligibility date.

16.3. The panel shall also issue a document for the Division, which shall state:

a. The date of the parolee's release on parole.

b. The date on which the parolee was incarcerated in jail pursuant to being charged with the violation(s), which caused his parole to be revoked.

c. The dates, if any, on which the parolee was released from jail on bond and subsequently reincarcerated, and

d. If applicable, the date on which the parolee was taken into custody pursuant to issuance of the revocation order.

§92-1-17. Release or Discharge from Parole.

17.1. A panel, as set forth in Section 3.2, shall consider all requests by the Division of Corrections and by parolees for release or discharge from further parole supervision, provided that the parolee shall have been released on parole for at least one year if sentenced to less than life imprisonment or five years if sentenced to life imprisonment and the ends of parole have been attained.

17.2. No parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, sexual offense against a minor, incest or offenses with the same essential elements if know by other terms in other jurisdictions shall be discharged from parole.

§92-1-18. Severability.

These rules are considered to be severable. In the event, these rules are inconsistent with or contrary to any statute, the provisions of the statute shall be applied.

a. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the panel or by any of the parties shall be grounds for granting a new hearing or for vacating, modifying or otherwise disturbing a decision or order, unless refusal to take such action is inconsistent with substantial justice. Any error, defect or irregularity, or variance, which does not affect substantial rights, may be disregarded.

Also these rules, including any time frames herein, are intended to serve only as guidelines for procedural functions of the Board and its panels. Nothing herein is intended to vest any person with any right, substantive or otherwise which is greater than otherwise exists in law.

§ 92-1-19. Request for Records

1. Any inmate or interested party may make a request for records of the parole board pertaining to consideration of an offender for release on parole; rescission or revocation of parole or discharge of a parolee from supervision provided such records are subject to disclosure under the West Virginia Freedom of Information Act, W.Va. Code § 29B-1-1 et seq. Examples of documents not to be disclosed include but are not limited to the following: official, judicial, or community sentiment of any form. Documents in which the identity of the victim or victim's address is set forth; treatment records of the offender and psychological reports. If a document contains non-disclosable information which is easily redacted then the document should be disclosed with the non-disclosable information redacted. All requests must be in writing and directed to the Chairman of the West Virginia Parole Board.

2. Recordings of hearings may be requested. Written transcripts of hearings are not undertaken by the Board. If any person desires a copy of an electronic recording of any hearing, he or she must also tender a written request for such recording to the Chairman of the Board.

3. Persons desiring to review public records of the Board may do so without charge at the Board's Office during normal business hours, provided that advance arrangements are made. Persons appearing without making such arrangements shall be given an appointment to review such records at a future date and time.

4. Inmates making a request for such records shall first be given the option of undertaking a personal inspection or if their incarceration will not permit their personal inspection by inspecting through a representative.

5. If a personal or representative inspection is not desired copies may be provided, provided that the person making the request tenders all costs associated with the production of the records in advance. Costs for the production of the records shall be as follows:

1. For recordings of hearings \$15.00 per disc plus postage.
2. For photocopies the cost shall be ten

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cents \$.15 plus postage with a
minimum fee of \$10.00;