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REVISED

RULES OF THE

WEST VIRGINIA

BOARD OF PROBATION AND PAROLE

EFFECTIVE NOVEMBER 1, 1983

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Aug 31, 1983
Administrative Law Division



WEST VIRGINIA
BOARD OF PROBATION AND PAROLE

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JOHN A. BAILES
CHAIRMAN

August 31, 1983

The Honorable A. James Manchin
Secretary of State
State of West Virginia
Charleston, West Virginia 25305

Dear Secretary Manchin:

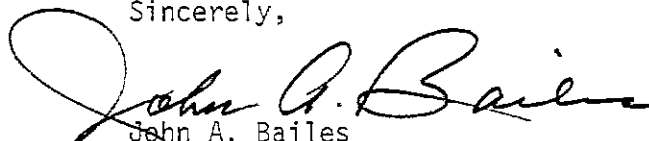
Herewith I am tendering two copies of the new rules and regulations of the West Virginia Board of Probation and Parole. These are tendered for filing in the State Register pursuant to West Virginia Code - Section 29A-1-3(b).

It is my hope that the format of these rules comply with the requirements which you have established under Section 29A-2-6.

The rules are themselves promulgated pursuant to the Board's authority in Section 62-12-13.

The Board wishes to publish its rules in booklet form for distribution to the Circuit Courts, Prosecutors, prisons and Parole Officers in this state. Pursuant to Code, Section 29A-2-8(d), I am notifying you of our intention to so publish and ask you for your consent. The Finance and Administration Department's Graphic Arts Division has quoted a price of \$1.15 per copy for one thousand booklets. In accordance with the aforementioned Section, I am providing a copy of this letter to the Legislative Auditor, thereby giving him written notice.

Sincerely,


John A. Bailes
Chairman

JAB:ef

cc: Encil Bailey, Legislative Auditor
Mr. Earl Vickers, Director
Legislative Services

FILED IN THE OFFICE OF
A. JAMES MANCHIN
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Title 92
~~Legislative Rules~~
WEST VIRGINIA

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BOARD OF PROBATION AND PAROLE

~~PROCEDURAL RULES~~

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

(Revised - August, 1983)

THIS DATE Aug 31, 1983
Administrative Law Division

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Section 1. General

1.01. Scope- These rules and regulations establish procedures to be employed by the Board of Probation and Parole in considering inmates incarcerated by the West Virginia Department of Corrections for parole and in granting parole and establishing conditions therefor, and in revoking parole of those inmates who violate the conditions aforementioned.

1.02. Authority- These rules and regulations are promulgated under authority of West Virginia Code, Chapter 62, Article 12, Section 13(c).

1.03. Filing Date- These rules and regulations are promulgated on the 29th day of August, 1983 and filed in the Secretary of State's Office on the 31st day of August, 1983.

1.04. Effective date- These rules and regulations become effective on November 1, 1983.

~~1.05. Purpose~~- The general purpose of these rules and regulations is to establish procedures and criteria whereby the West Virginia Board of Probation and Parole shall discharge the duties and exercise the powers described and reserved to the Board by West Virginia Code, Sections 62-12-13, 62-12-14, 62-12-16, 62-12-19. Accordingly, these rules are hereby designated as legislative rules, in accordance with Code, Section 29A-1-2(d).

Section 2. Definitions:

- a) The word "Board" as used herein shall mean the West Virginia Board of Probation and Parole.
- b) The word "Member" as used herein shall mean any member of the of Probation and Parole.
- c) The word "Officer" shall mean a Parole Officer under the employ of the West Virginia Department of Corrections.
- d) The words "criminal violation" shall refer to a violation of any conditions of the Parole Agreement which provide that parolees shall not violate any criminal laws of the United States, any State or Municipality.
- e) The words "technical violation" shall refer to a violation of any other condition of parole.
- f) The word "Department" shall refer to the West Virginia Department of Corrections.
- g) The word "institution" shall refer to either West Virginia Penitentiary, Huttonsville Correctional Center, the West Virginia Prison for Women, or any work release center.
- h) The words "Deputy Commissioner" shall refer to the Deputy Commissioner of the Department of Corrections or to such other employee thereof designated by the Commissioner of Corrections.

Section 3. Board Decisions

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

3.02. Method of Decision- The Board shall make all decisions by a concurring vote of at least two members. No inmate shall be granted parole without the

consent of two members, and no parolee shall have his parole revoked without the consent of two members.

3.03. Privacy of Decisions- All deliberations and votes of the Board shall be made in private.

Section 4. Eligibility for Parole Consideration

4.01. 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 must have served the minimum term of his sentence.
 - 2) If the inmate is serving a determinate sentence, he must have served one-third of his sentence.
 - 3) If the inmate is serving a sentence designated in the committing court's sentencing order as "Life with Mercy", he must have served ten years of his sentence.
 - 4) If the inmate is serving a sentence which has been designated in the committing court's sentencing order as "Life with Mercy," and has been convicted of felony crimes, twice before, he must serve fifteen years of his life sentence. This provision shall apply regardless of the crime for which the life sentence was imposed.
 - 5) 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, he shall be eligible for parole consideration in accordance with the following:

A i) If the inmate so committed or attempted to commit the crime of robbery as defined in Section 61-2-12 of the Code, he shall be eligible for parole either when he has served five years of his sentence or when he has served one-third of his sentence, if it is a determinate sentence, whichever of the two is greater in length.

B ii) 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 61-2-12, then he shall be eligible for parole after he has served three years of his sentence.

C iii) The provisions of this subsection will apply only to those inmates who were convicted of their felonies after 1 August 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).

6) If the inmate is serving two or more sentences concurrently, he shall be eligible for parole consideration after he has served the longest of the minimum terms. If one of the sentences is a determinate sentence, then he shall serve one-third of that sentence in order to be eligible, providing that such is longer than the minimum sentence for any concurrent indeterminate sentence.

Example: (1) If any inmate is serving a 1 to 10 year sentence and a 5 to 20 year sentence concurrently, he will be eligible for parole after he serves 5 years. (2) If an inmate is serving a 3 to 18 year sentence concurrently with a determinate sentence of 20 years, he shall serve one third of twenty to be eligible, which is 6 years and 8 months.

- 7) If an inmate is serving two consecutive sentences, then the time of his parole eligibility shall be computed by adding together the minimum terms of the sentences. If one of the sentences is a determinate sentence, then eligibility shall be computed by adding a number equal to one third of the determinate term to the minimum term of the other sentences. If the inmate is serving two determinate sentences consecutively, then eligibility shall be computed by adding a number equal to one third of one determinate term to a number equal to one third of the second term.

Example: An inmate serving a 1 to 10 year sentence consecutively with a 3 to 18 year sentence is eligible after he serves 4 years. An inmate serving a 3 to 18 year term consecutively with a determinate sentence of 20 years must serve 9 years and 8 months. An inmate serving two consecutive determinate sentences of thirty years apiece must serve twenty years.

- 8) When a parolee has violated the conditions of his release on parole by confession to, or being convicted of treason, murder, armed robbery, rape, sodomy, or incest, he shall be returned to the penitentiary of this State to serve the remainder of his maximum sentence, during which remaining part of his sentence he shall be ineligible for further parole.

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

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c) An inmate who is serving a sentence designated by the sentencing order as "Life" or "Life without Mercy" shall not be eligible for parole.

4.02. Eligibility Based on Prison Conduct

- a) An inmate shall lose his parole eligibility if he has been found guilty of violating any prison rule at any time in the month of his scheduled parole interview or in the three months prior thereto. The loss of parole eligibility shall be temporary; the inmate shall have his parole eligibility postponed until the fourth month after the month in which the rule violation occurred.
- b) No inmate who is incarcerated in punitive segregation, as distinct from administrative segregation, shall be eligible for parole. Such an inmate shall become eligible in the first full month after the month in which he is released from punitive segregation, except as otherwise provided for in the preceding section.

4.03. Detainers- An inmate who is subject to a detainer filed by authorities of another state or of the United States will be eligible for parole interviews. However, if parole is granted to such an inmate he shall

be paroled to the detainer. He shall not be released to parole supervision without the express written consent of the authorities who filed the detainer.

Section 5. Interviews of Inmates

5.01. Interview Schedules-Inmates who become eligible for parole shall be given a parole interview by the Board. No inmate shall have a right to an interview on any particular day. Due to the heavy caseload of the Board and the difficulties of constant travel by members for interview, the exact date and time of an interview shall be at the discretion of the Board. However, the inmate shall have a right to an interview within a specific month in accordance with the following:

- a) Initial Interview-An inmate, when he for the first time becomes eligible for parole, shall be interviewed by the Board in the month he becomes eligible.

Example: An inmate who was sentenced to a term of 3 to 18 years on 14 January 1985 shall have an interview scheduled for some date in January 1988.

- b) If the inmate is not granted parole at his initial interview, then he shall be scheduled for an interview in the twelfth month after the month that he received his initial interview. If he is denied parole in any interview, then he will receive his next interview in the twelfth month thereafter, except as otherwise provided for herein.
- c) The Board, for any reason, may advance the time of any interview, providing all other rules are complied with.

5.02. Notice to Inmate- The Board shall notify inmates of the date of their individual interviews by issuing a list every month. The list shall set forth each inmate of each institution who is to receive an interview in a single month, and the date for each inmate's interview. The list of each month's interviews shall be issued by the Board on or before the first day of the month prior thereto. The list shall be posted in each institution in a place where all general population inmates may view it and it shall be circulated to all inmates in segregation whose names are on it.

5.03. Notice to Officials-Written notice of each interview shall be sent by first class mail to the sentencing judge and the prosecuting attorney, so that they may comment on the appropriateness of granting parole. The notice shall be mailed at least ten days prior to the interview.

5.04. Time and Place of Interview-All parole interviews shall be held either at the West Virginia Penitentiary at Moundsville, the Huttonsville Correctional Center at Huttonsville, the West Virginia Prison for Women, or such other location as may be designated by the Department for incarceration of female felons, or the offices of the Board in Charleston. Interviews may, in special circumstances, be held at a hospital at the discretion of the Board.

Individual inmates shall not be scheduled in advance for specific times. Instead, 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. If necessary, due to time constraints, interviews may be continued to succeeding days.

5.05. Consideration of Documents at Interviews

- a) The Board will consider at the interview any of the following documents which it has obtained from appropriate sources:

- 1) An authentic copy of reports 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 on the inmate's work record, his participation in rehabilitative and educational programs, and his conduct.
- 3) The inmate's record of all proven violations of institutional Disciplinary Rules.
- 4) Reports prepared by institutional authorities on any improvement or other changes noted in an inmate's mental or moral condition while in prison, 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 prosecuted him, toward the law enforcement officers who arrested him, toward the crime for which he is under sentence, and toward his previous criminal record.
- 5) Reports submitted to the Board by institutional authorities of physical, mental and psychiatric examinations of the inmate conducted by either the Department or other agencies or professionals.
- 6) Sections of pre-sentence reports or post-sentence reports prepared by court officers which state the sentiment held

by law enforcement officers, the prosecuting attorney, 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 reports or post-sentence reports which state the facts and circumstances of the crimes for which the inmate has been convicted.
 - 8) Records pertaining to any previous release of the inmate on probation or parole.
- b) The inmate shall receive copies of all documents to be considered with the exception of those described in subsection (5) and (6) of the preceding section. These copies shall be delivered to the inmate by employees of the institution. They must be delivered to the inmate at least fourteen days prior to the date of the interview. The inmate shall at the time of delivery receive also a list of the documents. At the time of delivery the inmate shall be asked to sign a statement acknowledging receipt of the documents. The acknowledgment shall also be signed by the employee making delivery of the documents, and he shall also note the time and date of delivery. He shall send the executed acknowledgment to the Board.
- c) The Board may conduct the interview without any of the aforementioned documents and reports, providing that a written statement of why the Board has decided to proceed without them is prepared, signed by all members, and placed in the inmate's file.

5.06. 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 and to offer reasons why he should be granted parole, and to give the Board an opportunity to observe the demeanor of the inmate and pose questions to him. The proceedings in the interview shall be recorded by magnetic tape, stenography, or other means of equivalent competence.
- b) At the commencement of the interview, the Board shall:
 - 1) Interrogate the inmate to insure that he has received copies of all documents to which he is entitled under Rule 5.05. If the Board learns from such that the inmate has not received all such documents, it shall give the inmate the choice of either proceeding with the interview and giving him an opportunity to learn of the contents of and comment upon the documents which he has not received, or postponing his interview until the next month.
 - 2) Allow the inmate an opportunity to comment upon information contained in the documents and reports which the Board shall consider, and rebut any such information which he believes is false. In order to so rebut or to present additional information which he believes is relevant to his parole consideration, the inmate may present to the Board documents, affidavits or letters. He may also ask that the Board delay consideration of his case pending receipt of

of such documents, affidavits or letters if they are not available at the time of the interview. The Board has no responsibility for obtaining such information on the inmate's behalf.

Thereafter the Board shall allow the inmate an opportunity to make a statement as to why he should be granted parole, specifically as to why the Board should believe that if he were released on parole he would 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 is germane to the matters of fact raised in the documents or reports, by the inmate, or which concerns the inmate's personal or family life.

- c) The inmate shall have the right to determine whether his interview before the Board shall be open or closed. If he determines that the interview is to be closed, then no person shall be allowed to attend the interview other than the inmate himself, the Board members, Board employees, and security personnel in the employ of the Department. If the inmate determines that the interview is to be open, then any person who so desires may be present for the interview as space allows. However, no person in attendance may speak unless with the permission of the Board.
- 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 Board.

Section 6. Factors in Decision

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

- a) Whether the inmate has been found guilty of violating any institutional disciplinary rules, and
- b) Whether the inmate has participated in institutional education, work or rehabilitative programs, and
- c) Whether the inmate has previously been on parole or probation and, if so, how the inmate behaved thereon and the circumstances of his parole or probation revocation, and
- d) The sentiment expressed by members of the community and of criminal justice officials in the area where the crime occurred and in the area where the inmate lived prior to his conviction, if any such expression be available, and
- e) The facts and circumstances of the crime, and
- f) The demeanor of the inmate during his interview and the attitudes expressed then with regard to his previous criminal behavior and to social morals and law, and
- g) The inmate's prior criminal record, if any, and
- h) The results of any available physical, mental or psychiatric examinations.

The Board shall assess all factors together to determine whether (i) the inmate can and will conduct himself in a lawful manner if released and (ii) whether release is in the best interests of society.

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

Section 7. Waiver of Interview

The inmate may waive a parole interview either by writing a letter setting forth his desire to do so or by executing such waiver form as provided by the Board. Upon a receipt of either a letter or waiver the Board will treat the inmate's case as if he had been denied parole.

The inmate may also request by writing a letter that his parole interview be postponed for one or more months. The Board in its discretion may grant or deny a postponement.

Section 8. Decisions of the Board

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

- a) Grant parole, or
- b) Grant parole with special conditions, or
- c) Deny parole, or
- d) Deny parole and schedule an additional interview at any time within the next twelve months.

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

If the Board decides to deny parole, it shall notify him by letter of the specific reasons for denial. It may include among the reasons for denial a statement of recommendation for future behavior.

If the Board decides to grant parole, the Board shall issue in writing notification thereof which shall be sent to the inmate and a copy sent to the Deputy Commissioner.

Section 9. Rescission of Parole

9.01. Grounds for Rescission-The Board may rescind any grant of parole made pursuant to these rules if the inmate commits any infraction of institutional disciplinary rules after his interview and before his actual release from the institution.

9.02. Procedures for Rescission

- a) Upon the receipt of a written report from the Department that the inmate ~~has committed~~ any such infraction, 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 a rescission hearing can be held.
- b) Within one month of the issuance of the written hold the Board shall hold a rescission hearing at the institution or at another convenient location. The purpose of the hearing is to determine whether the inmate was found guilty of violating an institutional disciplinary rule and, if so, whether rescission is warranted under the circumstances. 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.
- c) The inmate may be represented at the rescission hearing by another inmate. He may present witnesses and

testify himself, and he may cross-examine all witnesses which testify against him. Staff may be present at their own volition to testify and the Board may require the presence of staff. Institutional disciplinary reports shall be accepted as hearsay to prove the commission of a violation of 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 of other mitigating factors.

Section 10. Revocation of Parole

The Board 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 the Board specifically finds that a parolee has violated a condition of parole which has been imposed either by law or by the Department. The Board 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.

Section 11. Prerequisites to Revocation Hearing

11.01. Report of Charge

- a) The Board shall convene a revocation hearing only if it receives from the Department:
 - 1) A written report which recites specific charges of violation of conditions, the date of each alleged violation, the date on which the parolee was served with written notice of the charges, the date, if any,

on which the parolee was placed in jail pursuant to the charge, the date, if any, the parolee was released from jail on bond, the date on which a preliminary revocation hearing was held by a Department hearing examiner, and whether for each charge the hearing examiner found probable cause.

- 2) A transcript of a preliminary revocation hearing on the charges and a written attestation by the hearing examiner as to the accuracy of the transcript.
 - 3) Copies of any documents or writings admitted as exhibits at the preliminary revocation hearing.
- b) Notwithstanding the foregoing, the Board shall convene a revocation hearing only if it receives the aforementioned report and transcript no later than the thirty-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 thirty-five day period shall be stopped by:
- 1) Any continuance which is sought and obtained by counsel for the parolee before 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 stop the running of the thirty-five day period for any other charge, or
 - 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 custody of a jail or the supervision of the Department.

The Department shall make a written statement to the Board explaining the facts and circumstances of any of the four aforementioned causes for stopping the running of the thirty-five day period.

11.02. Decision to Hold Hearing

- a) Upon receipt of the report and transcript, the Board shall consider such and determine by vote whether to hold a revocation hearing and, if so, on which charges. Any charge on which the Board chooses not to hold a hearing shall be dismissed.
- b) If the Board chooses to hold a revocation hearing, it shall determine a time, date and place to hold it and it shall select one of its own members to preside thereat. The revocation hearing shall in any event be held no later than thirty days after the date upon which either the preliminary hearing is held or upon which a written waiver of the preliminary hearing is executed.
- c) When the Board receives from the Department a report and transcript which sets forth that a parolee has been charged with a criminal offense, and 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 Board 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 pending criminal proceedings, and the Board shall determine whether to hold a revocation hearing upon receipt of written information of the verdict rendered by the criminal court.

11.03. Notice of Revocation Hearing

After the Board decides to schedule and hold a final revocation hearing the Board shall issue a written notice. The notice shall set forth:

- a) The time, date 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, and
- 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 Board finds good cause for not allowing such confrontation.

The Board shall send the notice to the parolee and to his attorney, if the existence and address of one is known. The method of delivery shall be either by certified mail or by arranging for an officer to deliver the notice by hand.

Section 12. Representation by Counsel

At the final revocation hearing the parolee may be represented by counsel who may be either an attorney or a lay person. If the parolee is indigent, he has the right to have an attorney appointed for him through the offices of the Circuit Court, as provided in West Virginia Code, Section 62-12-22. A continuance may be allowed to allow the parolee to obtain counsel if he does not have counsel and desires it.

Section 13. Procedure at Revocation

13.01. Presiding Member-One member of the Board shall be present at the hearing and he shall preside thereat, keeping order and ruling on all

disputes concerning evidence and procedure, in accordance with these rules.

13.02. Parties at Hearing- The accused parolee and his counsel shall be present at all stages of the hearing. The officer who charged the parolee or another officer designated by the Deputy Commissioner shall be present to present evidence and proof of the charge.

13.03. Attendance of Witnesses- Neither the Board nor the Department enjoys subpoena power and, therefore, neither the officer nor the parolee may compel the attendance of witnesses. Both the officer and the parolee shall be permitted to have voluntary witnesses.

13.04. Continuances-Continuances may be granted by the Board to either the officer or the parolee for good cause. If either desire a continuance, a motion may be made for such either in writing before the hearing or verbally at the hearing. The Board may waive the requirement of a written motion and accept a verbal motion before the hearing instead. The Board may refuse to grant a continuance if it determines that there is not good cause to grant the motion. Good cause shall include, among other things, (a) attorney's conflict with a previously scheduled court appearance, (b) inability of a desired witness to appear at the originally scheduled hearing, (c) illness, or (d) inadequate time to prepare a defense.

13.05. Record of Hearing-Final parole revocation hearings shall be recorded by magnetic tape or other reliable means.

13.06. Commencement of Hearing- At the commencement of the hearing, the presiding member shall identify for the record the name of the parolee, the place, time, and date of the hearing, and the names of those present in the room. He shall read aloud the charges to be considered at the hearing and the conditions which the parolee is charged with violating.

13.07. Plea

- a) After reading each charge, the presiding member 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 for the record. A refusal to plead shall be considered as a plea of not guilty.
- b) If the plea is guilty, then the officer need not present evidence of the charge, but the parolee shall be permitted to speak or otherwise present evidence as to the issue of mitigating circumstances. The officer may then present rebuttal evidence.
- c) If the parolee pleads not guilty, then the officer shall be required to put on evidence tending to support the charge and, afterwards, the parolee may put on evidence in his own defense. Both the officer and the parolee shall be permitted to present evidence to rebut that of the other.

13.08. Witnesses and Testimony

- a) Either the officer, the parolee, or the presiding member may demand that all witnesses be excluded from the room except when called 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 officer, including the officer himself, should he choose to testify. The 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.

13.09. Rules of Evidence for Revocation Hearings

- a) Formal rules of evidence do not apply and decisions to hear or exclude evidence shall be in the discretion of the presiding member. He should not refrain from relying on the kind of evidence on which responsible persons are accustomed to rely in serious affairs. In any event he shall resolve disputes concerning admissability 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's 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 shall not be admitted, except when:
 - 1) It is both reliable and trustworthy in its source and it is credible,
 - 2) It is evidence of a statement made by a person who has explicitly refused to attend the revocation hearing to testify,
 - 3) It is evidence of a confession or an admission made by the accused parolee, or
 - 4) It is hearsay evidence offered by the officer of the statement of a confidential informant. Such hearsay

shall not be admitted unless the Officer satisfies the presiding member that there is a justifiable fear of harm to the 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 is likely to result. The presiding member may accept into evidence the hearsay testimony of the Officer, an affidavit of the informant, or a private examination of the informant from which the parolee and his attorney shall be excluded.

- 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 was prepared by a person with direct knowledge of relevant facts and who is unable to appear to testify, providing the document is accompanied by an affidavit signed by the author attesting to the document's authenticity and accuracy.
 - 2) The document was prepared by and within the scope of duty of a public employee, excepting an 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 were such as to indicate its trustworthiness.
 - 3) The document is a report from the Department of Public Safety of scientific testing for identification of alcohol

or controlled substance or firearm or other forensic testing.

- e) 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 a crime.
- f) Proof of a charge cannot be hearsay alone. If hearsay evidence of the type described in subsection (c) or (d) is offered by the officer as proof of a violation of a condition of parole, the officer must also offer some other evidence, either direct or circumstantial, of the charge. Documentary evidence of the type described in subsection (e) is sufficient proof of a charge.
- g) The presiding member may strike or limit any questioning of witnesses which is abusive of or clearly intended to harass, intimidate or insult a witness.
- h) 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.

13.10. Burden of Proof-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 officer to prove the charge of parole violation.

Section 14. Waiver of Revocation Hearing

- a) The parolee may waive the final revocation hearing. He 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 and may result in revocation of parole.
- b) The procedure for waiver is as follows:
 - 1) The parolee or his attorney shall inform the Officer of his desire to waive; this may be done verbally or in writing.
 - 2) The presiding officer shall meet with the parolee and interrogate the parolee to insure that the parolee understands his right to hearing and all his attendant procedural rights as set forth in these rules.
 - 3) The parolee shall then sign a waiver form which shall be witnessed by the Officer.
- c) In lieu of this procedure, a parolee's counsel may execute a waiver on behalf of the parolee in writing which must be received by the Board.

Section 15. Decision by the Board

- a) Upon review of the transcript of receipt of waiver of the hearing, the Board may decide the case either by:
 - 1) Finding the parolee innocent of all charges and re-instate him to parole, or
 - 2) Finding the parolee guilty of one or more charges and revoke his parole, or
 - 3) Finding the parolee guilty of one or more charges and

reinstate him to parole with or without additional
and special conditions.

- b) The Board shall prepare a letter of decision in which it shall state its decision on each charge. If the Board finds the parolee guilty of any charge it shall set forth in the letter of decision a description of the evidence upon which the finding of guilty is based. The Board shall not set forth a description of evidence for those charges upon which the parolee has not been found guilty.
- c) If the Board has decided not to revoke parole, it shall send the letter of decision to the parolee, his attorney, and the Deputy Commissioner.

Section 16. Revocation Procedure

If the Board has decided to revoke parole, it shall send a letter of decision to the Deputy Commissioner. The Board shall depend upon the Department to supply the parolee and his attorney with a copy of the letter. The Board will issue a formal Order of Revocation 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 a violation,
- 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 letter of decision.

The Order of Revocation shall not be issued until the above information is received by the Board from the Department.



WEST VIRGINIA
BOARD OF PROBATION AND PAROLE

112 California Avenue, Room 307
CHARLESTON, WEST VIRGINIA 25305
TELEPHONE (304) 348-6366

JOHN A. BAILES
CHAIRMAN

JOHN D. ROCKEFELLER IV
GOVERNOR

May 11, 1983

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE May 13, 1983
Administrative Law Division

The Honorable A. James Manchin
Secretary of State
State of West Virginia
Main Capitol Building
Charleston, West Virginia 25301

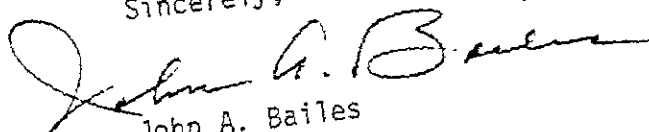
Dear Mr. Secretary:

Enclosed is a copy of the administrative rules and regulations recently promulgated by the West Virginia Parole Board pursuant to West Virginia Code, Section 62-12-13 (c). I am requesting that they be filed with your office pursuant to Code, Section 29A-1-3(b).

Mr. William Harrington of your office has been very cooperative in advising the Board about the proper procedures to follow in complying with the provision of Chapter 29A. He has provided my office with the format which you have prescribed for filing with the state register. We will renumber and reproduce our rules in accordance therewith and will refile.

The Board wishes to publish its rules in booklet form for distribution to the Circuit Courts, Prosecutors, prisons and Parole Officers in this state. Pursuant to Code, Section 29A-2-8(d), I am notifying you of our intention to so publish and ask you for your consent. The Finance and Administration Department's Graphic Arts Division has quoted a price of \$1.15 per copy for one thousand booklets. In accordance with the aforementioned Section, I am providing a copy of this letter to the Legislative Auditor, thereby giving him written notice.

Sincerely,


John A. Bailes
Chairman

JAB:ef

cc: Encil Bailey, Legislative Auditor

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FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE May 13, 1983
Administrative Law Division

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FOREWORD

The West Virginia Board of Probation and Parole was created by enactment of Chapter Sixty-Two, Article Twelve, Section Twelve of the Code of West Virginia. However, various other sections of the code influence the application of this section which reads, in part, as follows:

There shall be a state board of probation and parole, known as the "West Virginia board of probation and parole." The board shall consist of three members, not more than two of whom shall at any one time belong to the same political party. The board shall be appointed by the governor by and with the advice and consent of the senate. Each member of the board shall have had experience in the field of social science or administration of penal institutions and shall be familiar with the principles, practices and problems thereof and shall be otherwise competent to perform the duties of his office. (1939, c. 27, § 12; 1951, c. 65; 1953, c. 62; 1955, c. 42)

The Board shall be comprised of a Chairman who shall be designated by the Governor, a Member Secretary who shall be designated by the Board, and a Member.

The Chairman shall preside at all meetings. He shall have full administrative authority for conducting the business of the Board, including but not limited to deciding the time and place of assignment of members, time and place of Board meetings, preparation of budget requests, expenditure of funds, and staff personnel matters.

He shall be responsible for coordinating major matters of Board interest with other government bodies, departments and agencies. He shall insure that members devote full time and attention to their Board duties and he shall keep them informed on matters of general Board interest.

He may appoint another member to act as Acting Chairman in his absence.

Upon request of the other two members he shall schedule a special meeting of the Board at a reasonable time and at a suitable location.

The powers and duties of the Board, including authority to adopt rules and regulations are outlined in Chapter Sixty Two, Article 12, Section Thirteen of the code as follows:

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the prisoner will be subserved thereby, and subject to the limitations hereinafter provided, shall have the authority to release any such prisoner on parole for such terms and upon such conditions as are provided by this article. Any prisoner of a penitentiary of this State, to be eligible for parole:

(1) (A) Shall have served the minimum term of his indeterminate sentence, or shall have served one third of his definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, be eligible for parole prior to serving a minimum of three years of his sentence or the maximum sentence imposed by the court, whichever is less: Provided, that any person who committed, or attempted to commit, any violation of section Twelve (§ 61-2-12), article two, chapter sixty-one of this Code, with the use, presentment or brandishing of a firearm, shall not be eligible for parole prior to serving a minimum of five years of his sentence or one-third of his definite term sentence, whichever shall be the greater. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact

is clearly stated and included in the indictment or presentment by which such person was charged and was either (i) found by the court at the time of trial upon a plea of guilty or nolo contendere, or (ii) found by the jury upon submitting to such jury a special interrogatory for such purpose if the matter was tried before a jury, or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term "firearm" shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(i) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(iii) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, that the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Shall not apply with respect to cases not affected

by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment.

Insofar as such amendments relate to mandatory sentences restricting the eligibility for parole, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court;

(2) Shall not be under punishment or in solitary confinement for any infraction of prison rules;

(3) Shall have maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his release on parole;

(4) Shall have satisfied the board that, if released on parole, he will conduct himself in a lawful manner and that his release is not incompatible with the best interests and welfare of society generally.

Except in the case of one serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he has served the minimum term provided by law for the crime for which he was convicted. No person sentenced for life may be paroled until he has served ten years and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he has served fifteen years. In the case of a person sentenced to any penal institution of this State, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every prisoner so eligible, which reconsideration and review shall be by the entire board. If parole be denied, the prisoner shall be promptly notified.

(b) In the case of any person sentenced to or confined under sentence in any city or county jail in this State, the board shall act only upon written application for parole. If such jail prisoner

is under sentence on a felony conviction, the provisions hereof relating to penitentiary prisoners shall apply to and control his release on parole. If such person is serving time on a misdemeanor conviction, he is eligible for parole consideration, upon receipt of his written parole application and after time for probation release by the sentencing court or judge has expired.

(c) The board shall, with the approval of the governor, adopt rules and regulations governing the procedure in the granting of parole. No provision of this article and none of the rules and regulations adopted hereunder are intended or shall be construed to contravene, limit or otherwise interfere with or affect the authority of the governor to grant pardons and reprieves; commute sentences, remit fines or otherwise exercise his constitutional powers of executive clemency.

The board shall be charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this State by reason of any interstate compact entered into pursuant to the uniform act for out of state parolee supervision.

(d) When considering a penitentiary prisoner for release on parole, the board of parole shall have before it an authentic copy of or report on the prisoner's current criminal record as provided through the department of public safety of West Virginia, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the penitentiary, as the case may be, to which such prisoner is sentenced:

(1) On the prisoner's conduct record while in prison, including a detailed statement showing any and all infractions of prison rules by the prisoner and the nature and extent of discipline and punishment administered therefor;

(2) On improvement or other changes noted in the prisoner's mental and moral condition while in prison, including a statement expressive of the prisoner's current attitude toward society in general, toward the judge who sentenced him, toward the prosecuting attorney who prosecuted him, toward the policeman or other officer who arrested him

and toward the crime for which he is under sentence and his previous criminal record;

(3) On the prisoner's industrial record while in prison, showing the nature of his prison work or occupation and the average number of hours per day he has been employed in prison industry and recommending the nature and kinds of employment which he is best fitted to perform and in which he is most likely to succeed when he leaves prison;

(4) On physical, mental and psychiatric examinations of the prisoner conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

The board may waive the requirement of any such report when not available or not applicable as to any prisoner considered for parole but, in every such case, shall enter in the record thereof its reason for such waiver.

Before releasing any penitentiary prisoner on parole, the board of parole shall arrange for him to appear in person before the board and the board may examine and interrogate him on any matters pertaining to his parole, including reports before the board made pursuant to the provisions hereof. The board shall reach its own written conclusions as to the desirability of releasing such prisoner on parole. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the board of parole. All information, records and reports received by the board shall be kept on permanent file.

The board and its designated agents shall at all times have access to inmates imprisoned in any penal or correctional institutions of this State or in any city or county jail in this State, and shall have the power to obtain any information or aid necessary to the performance of their duties from other departments and agencies of the State or from any political subdivision thereof.

The board shall, if so requested by the governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation thereon to the governor.

Prior to making such recommendation and prior to releasing any penitentiary person on parole the board shall notify the sentencing

judge and prosecuting attorney at least ten days before such recommendation or parole. (1939, c. 27, § 13; 1953, c. 62; 1955, c. 42; 1976, c. 100; 1979, c. 87; 1981, c. 69.)

RULES OF PAROLE

1. Definitions:

- a) The word "Board" as used herein shall mean the West Virginia Board of Probation and Parole.
- b) The word "Member" as used herein shall mean any member of the Board of Probation and Parole.
- c) The word "Officer" shall mean a Parole Officer under the employ of the West Virginia Department of Corrections.
- d) The words "criminal violation" shall refer to a violation of any conditions of the Parole Agreement which provide that parolees shall not violate any criminal laws of the United States, any State or Municipality.
- e) The words "technical violation" shall refer to a violation of any other condition of parole.
- f) The word "Department" shall refer to the West Virginia Department of Corrections.
- g) The word "institution" shall refer to either West Virginia Penitentiary, Huttonsville Correctional Center, the West Virginia Prison for Women, or any work release center.
- h) The word "Deputy Commissioner" shall refer to the Deputy Commissioner of the Department of Corrections or to such other employee thereof designated by the Commissioner of Corrections.

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

The Board shall make all decisions by a concurring vote of at

least two members. No inmate shall be granted parole without the consent of two members, and no parolee shall have his parole revoked without the consent of two members.

All deliberations and votes of the Board shall be made in private.

3. Eligibility for Parole Consideration

3.1 Eligibility Based on Time Served

3.1A Any inmate, in order to be eligible for consideration for parole, must meet the following prerequisites:

- a) If the inmate is serving an indeterminate sentence, he must have served the minimum term of his sentence.
- b) If the inmate is serving a determinate sentence, he must have served one-third of his sentence.
- c) If the inmate is serving a sentence designated in the committing court's sentencing order as "Life with Mercy," he must have served ten years of his sentence.
- d) If the inmate is serving a sentence which has been designated in the committing court's sentencing order as "Life with Mercy," and has been convicted of felony crimes, twice before, he must serve fifteen years of his life sentence. This provision shall apply regardless of the crime for which the life sentence was imposed.
- e) 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, he 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 61-2-12 of the Code, he shall be eligible for parole either when he has served five years of his sentence or when he has served one-third of his sentence, if it is a determinate sentence, whichever of the two is greater in length.
- 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 61-2-12, then he shall be eligible for parole after he has served three years of his sentence.
- 3) The provisions of this subsection will apply only to those inmates who were convicted of their felonies after 1 August 1981. Inmates convicted of their offenses before that date shall have their eligibility determined by subsections (a),(b),(c) and (d). Resolution of any dispute over the applicability of this subsection shall be made by reference to Code, Section 62-12-13 (a) (1) (B).
- f) If the inmate is serving two or more sentences concurrently, he shall be eligible for parole consideration after he has served the longest of the minimum terms. If one of the sentences is a determinate sentence, then he shall serve one-third of that sentence in order to be eligible, providing that such is longer than the minimum sentence for any concurrent indeterminate sentence.

Example: 1) If any inmate is serving a 1-10 sentence and a 5 to 20 sentence concurrently, he will be eligible for parole after he serves 5 years. 2) If an inmate is serving a 3 to 18 sentence concurrently with a determinate sentence of 20 years, he shall serve one third of twenty to be eligible, which is 6 years and 8 months.

- g) If an inmate is serving two consecutive sentences, then the time of his parole eligibility shall be computed by adding together the minimum terms of the sentences. If one of the sentences is a determinate sentence, then eligibility shall be computed by adding a number equal to one third of the determinate term to the minimum term of the other sentences. If the inmate is serving two determinate sentences consecutively, then eligibility shall be computed by adding a number equal to one third of one determinate term to a number equal to one third of the second term.

Example: An inmate serving a 1 to 10 sentence consecutively with a 3 to 18 sentence is eligible after he serves 4 years. An inmate serving a 3 to 18 consecutively with a determinate sentence of 20 years must serve 9 years and 8 months. An inmate serving two consecutive determinate sentences of thirty years apiece must serve twenty years.

- h) When a parolee has violated the conditions of his release on parole by confession to, or being convicted of treason, murder, armed robbery, rape, sodomy, or incest, he shall be returned to the penitentiary of this State to serve the remainder of his maximum sentence, during which remaining part of his sentence he shall be ineligible for further parole.

- 3.1B Rules concerning parole eligibility shall not be interpreted to delay the actual discharge of sentence and release from prison. If an inmate has reached his maximum discharge date by benefit of Good Time, awarded pursuant to Code section 28.5.31, but has not reached parole eligibility, then he shall be discharged.
- 3.1C An inmate who is serving a sentence designated by the sentencing order as "Life" or "Life without Mercy" shall not be eligible for parole.
- 3.2 Eligibility Based on Prison Conduct
- 3.2A An inmate shall lose his parole eligibility if he has been found guilty of violating any prison rule at any time in the month of his scheduled parole interview or in the three months prior thereto. The loss of parole eligibility shall be temporary; the inmate shall have his parole eligibility postponed until the fourth month after the month in which the rule violation occurred.
- 3.2B No inmate who is incarcerated in punitive segregation, as distinct from administrative segregation, shall be eligible for parole. Such an inmate shall become eligible in the first full month after the month in which he is released from punitive segregation, except as otherwise provided for in the preceding section.
- 3.3 An inmate who is subject to a detainer filed by authorities of another state or of the United States will be eligible for parole interviews. However, if parole is granted to

such an inmate he shall be paroled to the detainer. He shall not be released to parole supervision without the express written consent of the authorities who filed the detainer.

4. Scheduling Interviews

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

No inmate shall have a right to an interview on any particular day. Due to the heavy caseload of the Board and the difficulties of constant travel by members for interviews, the exact date and time of an interview shall be at the discretion of the Board. However, the inmate shall have a right to an interview within a specific month in accordance with the following:

- a) Initial Interview - An inmate, when he for the first time becomes eligible for parole, shall be interviewed by the Board in the month he becomes eligible.

Example: An inmate who was sentenced to a term of 3 to 18 years on 14 January 1985 shall have an interview scheduled for some date in January 1988.

- b) If the inmate is not granted parole at his initial interview, then he shall be scheduled for an interview in the twelfth month after the month that he received his initial interview. If he is denied parole in any interview, then he will receive his next interview in the twelfth month thereafter, except as otherwise provided for herein.

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

5. Notice of Interview

The Board shall notify inmates of the date of their individual interviews by issuing a list every month. The list shall set forth each inmate of each institution who is to receive an interview in a single month, and the date for each inmate's interview. The list of each month's interviews shall be issued by the Board on or before the first day of the month prior thereto. The list shall be posted in each institution in a place where all general population inmates may view it and it shall be circulated to all inmates in segregation whose names are on it.

6. Notice to Officials

Written notice of each interview shall be sent by first class mail to the sentencing judge and the prosecuting attorney, so that they may comment on the appropriateness of granting parole. The notice shall be mailed at least ten days prior to the interview.

7. Time and Place of Interviews

All parole interviews shall be held either at the West Virginia Penitentiary at Moundsville, the Huttonsville Correctional Center at Huttonsville, The West Virginia Prison for Women, or such other location as may be designated by the Department for incarceration of female felons, or the offices of the Board in Charleston. Interviews may, in special circumstances, be held at a hospital at the discretion of the Board.

Individual inmates shall not be scheduled in advance for specific times. Instead, 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. If necessary, due to time constraints, interviews may be continued to succeeding days.

8. Consideration of Documents

8.1 The Board will consider at the interview any of the following documents which it has obtained from appropriate sources:

- a) An authentic copy of reports 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.
- b) Reports from the institution on the inmate's work record, his participation in rehabilitative and educational programs, and his conduct.
- c) The inmate's record of all proven violations of institutional Disciplinary Rules.
- d) Reports prepared by institutional authorities on any improvement or other changes noted in an inmate's mental or moral condition while in prison, 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 prosecuted him,

toward the law enforcement officers who arrested him,
toward the crime for which he is under sentence, and
toward his previous criminal record.

- e) Reports submitted to the Board by institutional authorities of physical, mental and psychiatric examinations of the inmate conducted by either the Department or other agencies or professionals.
- f) Sections of pre-sentence reports or post-sentence reports prepared by court officers which state the sentiment held by law enforcement officers, the prosecuting attorney, other public officials and citizens from the county where the inmate was sentenced or from the community in which the inmate resided.
- g) Sections of pre-sentence reports or post-sentence reports which state the facts and circumstances of the crimes for which the inmate has been convicted.
- h) Records pertaining to any previous release of the inmate on probation or parole.

8.2 The inmate shall receive copies of all documents to be considered with the exception of those described in subsection (e) and (f) of the preceding section. These copies shall be delivered to the inmate by employees of the institution. They must be delivered to the inmate at least fourteen days prior to the date of the interview. The inmate shall at the time of delivery receive also a list of the documents. At the time of delivery the inmate shall be asked to sign a statement acknowledging receipt of the documents. The acknowledgment

shall also be signed by the employee making delivery of the documents, and he shall also note the time and date of delivery. He shall send the executed acknowledgment to the Board.

- 8.3 The Board may conduct the interview without any of the aforementioned documents and reports, providing that a written statement of why the Board has decided to proceed without them is prepared, signed by all members, and placed in the inmate's file.

9. Conduct of the Interview

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 and to offer reasons why he should be granted parole, and to give the Board an opportunity to observe the demeanor of the inmate and pose questions to him.

The proceedings in the interview shall be recorded by magnetic tape, stenography, or other means of equivalent competence.

10. At the commencement of the interview, the Board shall:

- a) Interrogate the inmate to insure that he has received copies of all documents to which he is entitled under Rule 8.1 and 8.2.

If the Board learns from such that the inmate has not received all such documents, it shall give the inmate the choice of either proceeding with the interview and giving him an opportunity to learn of the contents of and comment upon the documents which he has not received, or

postponing his interview until the next month.

- b) Allow the inmate an opportunity to comment upon information contained in the documents and reports which the Board shall consider and rebut any such information which he believes is false. In order to so rebut or to present additional information which he believes is relevant to his parole consideration, the inmate may present to the Board documents, affidavits or letters. He may also ask that the Board delay consideration of his case pending receipt of such documents, affidavits or letters if they are not available at the time of the interview. The Board has no responsibility for obtaining such information on the inmate's behalf.

Thereafter the Board shall allow the inmate an opportunity to make a statement as to why he should be granted parole, specifically as to why the Board should believe that if he were released on parole he would 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 is germane to the matters of fact raised in the documents or reports, by the inmate, or which concerns the inmate's personal or family life.

- 11. The inmate shall have the right to determine whether his interview before the Board shall be open or closed. If he determines that the interview is to be closed, then no person shall be

allowed to attend the interview other than the inmate himself, the Board members, Board employees, and security personnel in the employ of the Department. If the inmate determines that the interview is to be open, then any person who so desires may be present for the interview as space allows. However, no person in attendance may speak unless with the permission of the Board.

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

13. Factors in Decisions

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

- a) Whether the inmate has been found guilty of violating any institutional disciplinary rules.
- b) Whether the inmate has participated in institutional education, work or rehabilitative programs.
- c) Whether the inmate has previously been on parole or probation and, if so, how the inmate behaved thereon and the circumstances of his parole or probation revocation.
- d) The sentiment expressed by members of the community and of criminal justice officials in the area where the crime occurred and in the area where the inmate lived prior to his conviction, if any such expression be available.
- e) The facts and circumstances of the crime.

- f) The demeanor of the inmate during his interview and the attitudes expressed then with regard to his previous criminal behavior and to social morals and law.
- g) the inmate's prior criminal record, if any.
- h) The results of any available physical, mental or psychiatric examinations.

The Board shall assess all factors together to determine whether (i) the inmate can and will conduct himself in a lawful manner if released and (ii) whether release is in the best interest of society.

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

14. Waiver of Interview

The inmate may waive a parole interview either by writing a letter setting forth his desire to do so or by executing such waiver form as provided by the Board. Upon a receipt of either a letter or waiver the Board will treat the inmate's case as if he had been denied parole.

The inmate may also request by writing a letter that his parole interview be postponed for one or more months. The Board in its discretion may grant or deny a postponement.

15. Decisions of the Board

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

- a) Grant parole.
- b) Grant parole with special conditions.
- c) Deny parole.

d) Deny parole and schedule an additional interview at any time within the next twelve months.

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

If the Board decides to deny parole, it shall notify him by letter of the specific reasons for denial. It may include among the reasons for denial a statement of recommendation for future behavior.

If the Board decides to grant parole, the Board shall issue in writing notification thereof which shall be sent to the inmate and a copy sent to the Deputy Commissioner.

16. Rescission of Parole

The Board may rescind any grant of parole made pursuant to these rules if the inmate commits any infraction of institutional disciplinary rules after his interview and before his actual release from the institution.

Upon the receipt of a written report from the Department that the inmate has committed any such infraction, 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 a rescission hearing can be held.

Within one month of the issuance of the written hold the Board shall hold a rescission hearing at the institution or

at another convenient location. The purpose of the hearing is to determine whether the inmate was found guilty of violating an institutional disciplinary rule and, if so, whether rescission is warranted under the circumstances.

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.

17. Rescission Hearing

The inmate may be represented at the rescission hearing by another inmate. He may present witnesses and testify himself, and he may cross-examine all witnesses which testify against him. Staff may be present at their own volition to testify and the Board may require the presence of staff. Institutional disciplinary reports shall be accepted as hearsay to prove the commission of a violation of 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 of other mitigating factors.

18. Revocation of Parole

The Board may revoke the parole of any inmate who has previously been granted parole and who has not been discharged from supervision. However, parole shall not be revoked unless the Board specifically finds that a parolee has vio-

lated a condition of parole which has been imposed either by law or by the Department. The Board 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.

19. Prerequisites to Revocation Hearing

19.1 The Board shall convene a revocation hearing only if it receives from the Department:

- a) A written report which recites specific charges of violation of conditions, the date of each alleged violation, the date on which the parolee was served with written notice of the charges, the date, if any, on which the parolee was placed in jail pursuant to the charge, the date, if any, the parolee was released from jail on bond, the date on which a preliminary revocation hearing was held by a Department hearing examiner, and whether for each charge the hearing examiner found probable cause.
- b) A transcript of a preliminary revocation hearing on the charges and a written attestation by the hearing examiner as to the accuracy of the transcript.
- c) Copies of any documents or writings admitted as exhibits at the preliminary revocation hearing.

19.2 Notwithstanding the foregoing, the Board shall convene a revocation hearing only if it receives the aforementioned report and transcript no later than the thirty-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 thirty-five day period shall be stopped by:

- a) Any continuance which is sought and obtained by counsel for the parolee before the preliminary parole hearing, or
- b) 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 stop the running of the thirty-five day period for any other charge, or
- c) The absence of the parolee from the boundaries of this State for whatever reason, or
- d) The escape or absconson of the parolee from custody of a jail or the supervision of the Department.

The Department shall make a written statement to the Board explaining the facts and circumstances of any of the four aforementioned causes for stopping the running of the thirty-five day period.

20. Upon receipt of the report and transcript, the Board shall consider such and determine by vote whether to hold a revocation hearing and, if so, on which charges. Any charge on which the Board chooses not to hold a hearing shall be dismissed.

If the Board chooses to hold a revocation hearing, it shall determine a time, date and place to hold it and it shall select one of its own members to preside thereat. The

revocation shall in any event be held no later than thirty days after the date upon which either the preliminary hearing is held or upon which a written waiver of the preliminary hearing is executed.

When the Board receives from the Department a report and transcript which sets forth that a parolee has been charged with a criminal offense, and 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 Board 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 pending criminal proceedings, and the Board shall determine whether to hold a revocation hearing upon receipt of written information of the verdict rendered by the criminal court.

21. Notice of Revocation Hearing

After the Board decides to schedule and hold a final revocation hearing the Board shall issue a written notice. The notice shall set forth:

- a) The time, date 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 Board finds good cause for not allowing such confrontation.

The Board shall send the notice to the parolee and to his attorney, if the existence and address of one is known.

The method of delivery shall be either by certified mail or by arranging for an officer to deliver the notice by hand.

22. Representation by Counsel

At the final revocation hearing the parolee may be represented by counsel who may be either an attorney or a layperson. If the parolee is indigent, he has the right to have an attorney appointed for him through the offices of the Circuit Court, as provided in West Virginia Code, Section 62-12-22. A continuance may be allowed to allow the parolee to obtain counsel if he does not have counsel and desires it.

23. The Hearing

One member of the Board shall be present at the hearing and he shall preside thereat, keeping order and ruling on all disputes concerning evidence and procedure, in accordance with these rules.

The accused parolee and his counsel shall be present at all stages of the hearing.

The officer who charged the parolee or another officer designated by the Deputy Commissioner shall be present to present evidence and proof of the charge.

24. Attendance of Witnesses

Neither the Board nor the Department enjoys subpoena power and, therefore, neither the officer nor the parolee may compel the attendance of witnesses. Both the officer and the parolee shall be permitted to have voluntary witnesses.

25. Continuances may be granted by the Board to either the officer or the parolee for good cause. If either desire a continuance, a motion may be made for such either in writing before the hearing or verbally at the hearing. The Board may waive the requirement of a written motion and accept a verbal motion before the hearing instead.

The Board may refuse to grant a continuance if it determines that there is not good cause to grant the motion. Good cause shall include, among other things, a) attorney's conflict with a previously scheduled court appearance, b) inability of a desired witness to appear at the originally scheduled hearing, and, c) illness, or d) inadequate time to prepare a defense.

26. Procedure in the Revocation Hearing

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

26.2 At the commencement of the hearing, the presiding member shall identify for the record the name of the parolee, the place, time, and date of the hearing, and the names of all those present in the room. He shall read aloud the charges to be considered at the hearing and the conditions which the parolee is charged with violating.

After reading each charge, the presiding member 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 for the record. A refusal to plead shall be considered as a plea of not guilty.

- 26.3 If the plea is guilty, then the officer need not present evidence of the charge, but the parolee shall be permitted to speak or otherwise present evidence as to the issue of mitigating circumstances. The officer may then present rebuttal evidence.
- 26.4 If the parolee pleads not guilty, then the officer shall be required to put on evidence tending to support the charge and, afterwards, the parolee may put on evidence in his own defense. Both the officer and the parolee shall be permitted to present evidence to rebut that of the other.
- 26.5 Either the officer, the parolee, or the presiding member may demand that all witnesses be excluded from the room except when called to testify.
- 26.6 All witnesses shall be placed under oath to tell the truth before testifying.
- 26.7 The parolee may cross-examine witnesses presented by the officer, including the officer himself, should he choose to testify. The 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.

27. Rules of Evidence for Revocation Hearings

27.1 Formal rules of evidence do not apply and decisions to hear or exclude evidence shall be in the discretion of the presiding member. He should not refrain from relying on the kind of evidence on which responsible persons are accustomed to rely in serious affairs. In any event he shall resolve disputes concerning admissability in accordance with these rules.

27.2 Evidence may be excluded if it is:

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

27.3 Hearsay evidence shall not be admitted, except when:

- a) It is both reliable or trustworthy in its source and it is credible,
- b) It is evidence of a statement made by a person who has explicitly refused to attend the revocation hearing to testify,
- c) It is evidence of a confession or an admission made by the accused parolee, or
- d) It is hearsay evidence offered by the officer of the statement of a confidential informant. Such hearsay

shall not be admitted unless the Officer satisfies the presiding member that there is a justifiable fear of harm to the 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 is likely to result. The presiding member may accept into evidence the hearsay testimony of the Officer, an affidavit of the informant, or a private examination of the informant from which the parolee and his attorney shall be excluded.

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

- a) The document was prepared by a person with direct knowledge of relevant facts and who is unable to appear to testify, providing the document is accompanied by an affidavit signed by the author attesting to the document's authenticity and accuracy.
- b) The document was prepared by and within the scope of duty of a public employee, excepting an 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 were such as to indicate its trustworthiness.
- c) The document is a report from the Department of Public Safety of scientific testing for identification of alcohol

or controlled substance or firearm or other forensic testing.

- 27.5 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 a crime.
- 27.6 Proof of a charge cannot be hearsay alone. If hearsay evidence of the type described in rule 27.3 or 27.4 is offered by the officer as proof of a violation of a condition of parole, the officer must also offer some other evidence, either direct or circumstantial, of the charge. Documentary evidence of the type described in rule 27.5 is sufficient proof of a charge.
- 27.7 The presiding member may strike or limit any questioning of witnesses which is abusive of or clearly intended to harrass, intimidate or insult a witness.
- 27.8 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.
28. Burden of Proof
The Board shall not order the 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 officer to prove the charge of parole violation.

29. Waiver of Revocation Hearing

29.1 The parolee may waive the final revocation hearing. He 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 and may result in revocation of parole.

29.2 The procedure for waiver is as follows:

- a) The parolee or his attorney shall inform the Officer of his desire to waive; this may be done verbally or in writing.
- b) The presiding officer shall meet with the parolee and interrogate the parolee to insure that the parolee understands his right to hearing and all his attendant procedural rights as set forth in these rules.
- c) The parolee shall then sign a waiver form which shall be witnessed by the Officer.

In lieu of this procedure, a parolee's counsel may execute a waiver on behalf of the parolee in writing which must be received by the Board.

30. Decision by the Board

Upon review of the transcript or receipt of waiver of the hearing, the Board may decide the case either by:

- a) Finding the parolee innocent of all charges and re-instate him to parole,
- b) Finding the parolee guilty of one or more charges and revoke his parole, or
- c) Finding the parolee guilty of one or more charges and

reinstate him to parole with or without additional and special conditions.

31. The Board shall prepare a letter of decision in which it shall state its decision on each charge. If the Board finds the parolee guilty of any charge it shall set forth in the letter of decision a description of the evidence upon which the finding of guilty is based. The Board shall not set forth a description of evidence for those charges upon which the parolee has not been found guilty.

If the Board has decided not to revoke parole, it shall send the letter of decision to the parolee, his attorney and the Deputy Commissioner.

32. Revocation Procedure

If the Board has decided to revoke parole, it shall send a letter of decision to the Deputy Commissioner.

The Board shall depend upon the Department to supply the parolee and his attorney with a copy of the letter.

The Board will issue a formal Order of Revocation 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 a violation,
- 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 letter of decision.

The Order of revocation shall not be issued until the above information is received by the Board from the Department.