

**WEST VIRGINIA
SECRETARY OF STATE**

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #5 ☐

Do Not Mark In This Box

FILED

2001 AUG 23 P 1:53

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Parole Board TITLE NUMBER: 92

CITE AUTHORITY: _____

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code 29A-1-3(b)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 92 C.S.R. 1

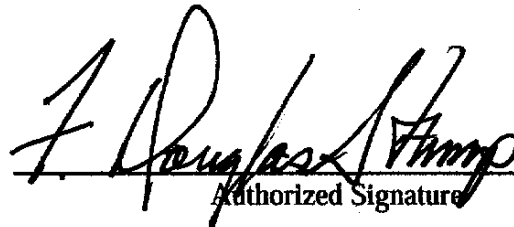
TITLE OF RULE BEING AMENDED: _____

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 August 23, 2001


Authorized Signature

BOB WISE
GOVERNOR



BOARD MEMBERS

SANDRA M. ILBERTON

BENITA F. MURPHY
MEMBER/SEC

FREDRICK R. BUMGARDNER

CHRISTIE WORKMAN

JOE MARTIN
CABINET SECRETARY

F. DOUGLAS STUMP
CHAIRMAN

WEST VIRGINIA PAROLE BOARD

112 California Avenue, Room 307
Charleston, West Virginia 25305-0700
Telephone (304) 558-6366
Fax Number (304) 558-5678

Joe Manchin III, Secretary of State
Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

August 23, 2001

Dear Mr. Manchin,

Attached are the revised and updated Procedural Rules for the West Virginia Parole Board. These Rules have not been updated since 1983.

I have received approval of these Rules from the Governor's Office and also from the Division of Military Affairs and Public Safety, Secretary Joe Martin.

I have provided a final hard copy of the Revised Rules and also a copy of the 1983 Rules that indicates the changes made to make our revisions and updates. I have also provided copies of our correspondence from Secretary Martin and General Counsel Pat Esposito.

If you have any questions regarding these Procedural Rules please feel free to contact my office. Thank you for your time and consideration in this matter.

Sincerely,

F. Douglas Stump, Chairman
West Virginia Parole Board

FDS:pah

Attachments: Revised Rules of the West Virginia Parole Board
Documented changes to 1983 Procedural Rules of the West Virginia Board of Probation and Parole
Letter from the Office of the Governor, General Counsel Pat Esposito and correspondence with Secretary Martin, M.A.P.S.
Administrative Law Division "Form 5": Adoption of Procedural Rule



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

June 26, 2001

F. Douglas Stump, Chairperson
Parole Board
Building 4, Room 307
112 California Avenue
Charleston, WV 25305-0700

Dear Chairperson Stump:

Per the request of the Parole Board, the Office of Governor Bob Wise has reviewed the revised Rules of the West Virginia Parole Board and agrees that these revised Rules are appropriate.

Your efforts are greatly appreciated. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Pat Esposito".

Pat Esposito
Deputy General Counsel

cc: David Cleek, Senior Deputy Attorney General

BOB WISE
GOVERNOR



JOE MARTIN
CABINET SECRETARY

F. DOUGLAS STUMP
CHAIRMAN

WEST VIRGINIA PAROLE BOARD

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BOARD MEMBERS

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BENITA F. MURPHY
MEMBER/SEC

FREDRICK R. BUMGARDNER

CHRISTIE WORKMAN

Cabinet Secretary Martin
Department of Military Affairs and Public Safety
1900 Kanawha Blvd., East
Charleston, WV 25305

July 20, 2001

Dear Secretary Martin,

Enclosed are the West Virginia Parole Board's proposed Procedural Rules for the year 2001. These rules have not been updated and filed with the State of West Virginia since 1983. With these rules we have attached a copy of the 1983 rules, which also outlines the changes in a different font style to assist in the interpretation of the revisions.

We ask that you review the rules and let us know if you feel there are any changes that need to be made, and we also ask that if you see no need for changes you provide us with your approval of these rules so that we may file them with the Secretary of State's office.

Thank you for your time and consideration in this matter.

Sincerely

A handwritten signature in black ink, appearing to read "F. Douglas Stump", written over a horizontal line.

F. Douglas Stump
Chairman, West Virginia Parole Board

FDS:pah
cc: file

BOB WISE
GOVERNOR

JOE MARTIN
CABINET SECRETARY

F. DOUGLAS STUMP
CHAIRMAN



WEST VIRGINIA PAROLE BOARD

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BENITA F. MURPHY
MEMBER/SEC.

FREDRICK R. BUMGARDNER

CHRISTIE WORKMAN

Memorandum

To: The Honorable Governor Wise, thru General
Counsel Pat Esposito
Secretary Martin, M.A.P.S.
David Cleek, Office of Attorney General

From: F. Douglas Stump, Chairman
West Virginia Parole Board *FDS*

Date: 08/23/2001

Re: Revised Procedural Rules, West Virginia Parole
Board

The West Virginia Parole Board has submitted the Revised Procedural Rules to the Secretary of State's Office for approval. The following changes were made during the course of the approval process by Military Affairs and Public Safety and General Counsel:

- (1) "Working Days" was deleted from the entire document. The West Virginia Parole Board will follow the procedures of the court system to use regular calendar days while conducting parole interviews and revocation hearings. (The number of days, be it 30, 35 or 45 was not changed, only the definition that indicated "working days".)

- (2) The names of the various Division of Corrections institutions were added to the document in the "Time and Place of Interviews" section of the Rules (some of these names had been inadvertently omitted in the first draft).

I would like to thank everyone involved in the process of revising and updating these Rules and those involved in the approval process. When these Rules are approved and documented at the Secretary of State's Office hard copies will be printed and made available to anyone inquiring.

If you have any questions regarding the above listed revisions please feel free to contact my office.

Thank you for your time and attention to this matter.

FDS:pah

cc: The Honorable Governor Bob Wise, thru General Counsel Pat Esposito

Military Affairs and Public Safety, Secretary Martin
West Virginia Attorney General's Office, David Cleek

REVISED RULES

of the

WEST VIRGINIA PAROLE BOARD

EFFECTIVE _____

Rules of the West Virginia Parole Board

West Virginia Parole Board

Revised Rules

Effective _____

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Rules of the West Virginia Parole Board

MISSION STATEMENT

The West Virginia Parole Board, as an integral part of West Virginia's Criminal Justice System, makes independent, quality, conditional releases of adult offenders. It also makes recommendations to the Governor for adult offenders who petition for pardons or other clemency.

The Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders back into society.

MAKING THE MISSION A REALITY

The purpose of this Mission document is to provide direction to Board Members and support staff of the West Virginia Parole Board for the achievement of excellence in the field of corrections in general and in conditional release in particular. It is also a document that explains to our criminal justice partners, to offenders and ex-offenders, to legislators and to the public, the membership of the Board, what it stands for, what it does, and how it does it.

As part of the criminal justice system, the Board contributes to the maintenance of a just, peaceful and safe society. The Board uses the word "contribute" in its Mission Statement as the Board is not alone in the pursuit of this goal. In its efforts to achieve this goal the Board works in conjunction with state, national and international correctional services and parole boards, police agencies, after-care agencies, prosecutors, judges, and many other organizations and individuals in the community.

The legal authority under which the Board operates is set out in Chapter Sixty-two of the West Virginia Code.

In making quality decisions regarding conditional releases and informed recommendations to the Governor in clemency cases, the Board's primary objectives are the long-term protection of society and the rehabilitation and reintegration of the offender into society. The members of the Board firmly believe law-abiding behavior can best be achieved by timely and supervised conditional release. In making its decisions, the Board is autonomous and independent. However, it is accountable for its actions to its other criminal justice partners, to legislators, the Governor, and ultimately, to all citizens of West Virginia.

This document supplants the original West Virginia Parole Board Mission Statement adopted in 1997.

Rules of the West Virginia Parole Board

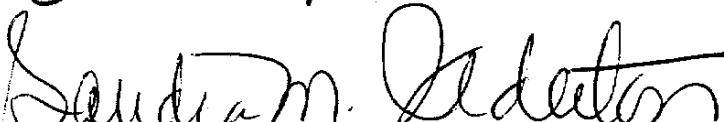
The Board would like to thank all those who have contributed to this document, particularly those individuals from other state, federal and international boards who helped bring it to fruition.

Achieving the mandate of the West Virginia Parole Board will not be an easy accomplishment. It involves the safeguarding of two of our most precious societal values: public safety and personal freedom. "Making the Mission a Reality" therefore is a challenge that becomes the primary responsibility and obligation to all those associated with the Board.


F. Douglas Stump, Chairman


Frederick R. Bumgardner, Member


Christie Workman, Member


Sandra Ilderton, Member


Benita Murphy, Member

*This document supplants the original West Virginia Parole Board Mission Statement adopted in 1997.

Rules of the West Virginia Parole Board

OBJECTIVES

In the performance of its duties, the West Virginia Parole Board strives to attain the following objectives:

To contribute to the attainment of a just, peaceful and safe society.

- * By ensuring that every Board decision is based on the risk presented by the offender and is consistent with the goal of promoting the protection of society.
- * By promoting the safe integration into society of every offender who is released, both by imposing pertinent release conditions and by responding, as appropriate, to significant changes in the risk presented.
- * By ensuring that Board members are provided with effective risk assessment tools, as well as with complete and accurate information about each offender.
- * By ensuring that offenders are held accountable for their behavior and that release decisions reflect their potential to be integrated into society as law-abiding citizens.
- * By clearly articulating the values, expectations, operating principles and policies that direct the performance of the Board's personnel.
- * By working in collaboration with criminal justice personnel and others in identifying better ways to attain the shared goals of preventing crime and protecting society.
- * By allocating financial resources and personnel in an effective and efficient manner.

Rules of the West Virginia Parole Board

To respect the inherent potential and dignity of all individuals and the equal rights of all members of society.

- * By ensuring the rights of each individual involved in the conditional release process are protected.
- * By ensuring that each person is treated in a manner that recognizes and responds to individual needs and characteristics.
- * By ensuring that the constraints placed upon each offender are the least restrictive necessary to promote the protection of society and to promote the rehabilitation of the offender to become a productive member of society.
- * By ensuring that victims who so wish, are duly informed and their input fully and fairly considered in the conditional release process.
- * By ensuring an impartial and timely process of appeal.

To encourage qualified and motivated individuals to contribute to the achievement of the Board's Mission.

- * By ensuring that Board personnel have an understanding of criminal justice policies and can assist in the attainment of the Board's Mission.
- * By creating an environment within the Board that encourages initiative, fosters mutual trust and respect and supports the achievement of the Board's Mission.

To demonstrate openness, integrity and accountability in the execution of the Board's mandate.

- * By ensuring that the Board's decisions are communicated clearly and distributed in a timely manner to those who are entitled to be notified of them.
- * By providing information to our colleagues, the media and others in a manner that reflects our duty to provide information about the Parole Board's performance, policies and processes.
- * By ensuring that all Parole Board personnel and parole officers pursue the attainment of our Mission in a manner that reflects the values and principles identified in the Mission Statement.

Rules of the West Virginia Parole Board

FORWARD

The West Virginia Parole Board was created by enactment of chapter sixty-two [62-12-12], article twelve, section twelve of the Code of West Virginia. However, various other sections of the Code influence the application of this section. West Virginia Code § 62-12-12, as modified by the 1997 West Virginia Legislature, reads, in part:

There shall be a state Board of parole, known as "The West Virginia Parole Board." The Board shall consist of five members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than three of the Board members may 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. Appointments following the effective date of this section shall be made in such a manner that each congressional district is represented and so that no more than two members of the board reside in any one congressional district. Each member of the Board shall have a degree in criminal justice or like experience and academic training and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Any member qualified under this section is eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. Any single member of the board is empowered to hold any hearing provided for in this article, where a transcript of the hearing, including exhibits and documentary evidence, and the recommendation of the member holding the hearing is submitted to the board for decision.

(1930, c. 27, § 12; 1951, c. 65; 1953, c. 62; 1955, c. 42; 1994, c. 126, 1997, c. 77.)

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 three Members.

The Chairman shall preside at all meetings and shall have full administrative responsibility for conducting the business of the Board, including but not limited to: deciding the time and place of assignments of members, deciding the time and place of Board meetings, preparing budget requests, providing sufficient clerical and support staff, overseeing expenditure of funds, and all staff personnel matters.

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

The Chairman may appoint another member as Acting Chairman in his absence.

Rules of the West Virginia Parole Board

Upon request of at least three members the Chairman shall schedule a special meeting of the Board at a reasonable time and at a suitable location.

West Virginia Code § 62-12-13

Powers and duties of board; eligibility for parole; procedure for granting parole.

The powers and duties of the Board, including the authority to adopt rules and regulations, are outlined in chapter sixty-two [62-12-13], article twelve, section thirteen of the West Virginia Code, entitled Powers and duties of Board; eligibility for parole; procedure for granting parole, which reads in its entirety as follows:

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations hereinafter provided, shall release any inmate on parole for terms and upon conditions as are provided by this article.

(b) Any inmate of a state correctional center, to be eligible for parole if he or she:

(1)(A) Has served the minimum term of his or her indeterminate sentence, or shall have served one fourth of his or her definite term sentence, as the case may be, except that in no case is any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, eligible for parole prior to serving a minimum of three years of his or her 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, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this section applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of a felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of his use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which the 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 the 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.

Rules of the West Virginia Parole Board

For the purpose of this section, the term "firearm" means 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) Apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) 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 the 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 gives 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 will 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; and

(iv) Does not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section apply and are construed without reference to the amendments.

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

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

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

(4) Has submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and postrelease counseling and treatment, said parole release plan having been approved by the commissioner of corrections or his or her authorized representative; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(C) Except in the case of a person serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he or she has served the minimum term provided by law for the crime

Rules of the West Virginia Parole Board

for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years: Provided, That no person convicted of first degree murder for an offense committed on or after the tenth day of June, one thousand nine hundred ninety-four, is eligible for parole until he or she has served fifteen years.¹

(d) In the case of a person sentenced to any state correctional center, it is the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole.

(e) If, upon such consideration, parole be denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the person of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and is still eligible: Provided, That the board may reconsider and review parole eligibility at any time within three years following the denial of parole of a person serving a life sentence.

(f) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state

¹West Virginia Code § 61-11-18 dealing with punishment for second and third offense of felony was modified by the 1994 Legislature to read: "(b). . . when any person is convicted of first degree murder or second degree murder or a violation of section three [61-8b-3], article eight-b, of this chapter, and it is determined, as provided in section nineteen [§ 61-11-19] of this article, 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 offense described in this subsection, such person shall be punished by confinement in the state correctional facility for life and is not eligible for parole."

Rules of the West Virginia Parole Board

correctional center may make written application for parole. The terms and conditions for parole consideration established by this article apply to such inmates.

(g) The board shall, with the approval of the governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted hereunder are intended or may 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 or her constitutional powers of executive clemency.

(h) The department of corrections is 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.

(i)(1) When considering an inmate of a state correctional center for release on parole, the parole board is to have before it an authentic copy of or report on the inmate's current criminal record as provided through the West Virginia state police, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the state correctional center to which such inmate is sentenced:

(i) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules² by the inmate and the nature and extent of discipline administered therefor;

(ii) On improvement or other changes noted in the inmate's mental and moral condition while in custody, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;³

²The board shall consider only violations of Class I and/or II disciplinary rules.

³And, when applicable, toward the parole officer and toward any or all Parole Board Members.

Rules of the West Virginia Parole Board

(iii) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves prison;

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

(2) The board may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but in every such case, shall enter in the record thereof its reason for such waiver: Provided, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve [§§ 61-8B-12 et seq.], article eight, chapter sixty-one of this code or under the provisions of article eight-b [§§ 61-8B-1 et seq.] or eight-c [§§ 61-8C-1 et seq.], chapter sixty-one of this code, the board may not waive the report required by this subsection and the report is to include a study and diagnosis including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: Provided, however, That nothing disclosed by the person during the study or diagnosis may be made available to any law-enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the person. In addition, in such cases, the parole board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations.

(j) Before releasing any inmate on parole, the board of parole shall arrange for the inmate to appear in person, before at least three members of the board and the board may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the board made pursuant to the provisions hereof: Provided, That an inmate may appear by video teleconference if the members of the parole board conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the parole board conducting

Rules of the West Virginia Parole Board

the examination and hear all of the members' remarks.⁴ The board shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the board members considering the release shall concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the parole board. All information, records and reports received by the board are to be kept on permanent file.

(k) The board and its designated agents are at all times to have access to inmates imprisoned in any state correctional center or in any city, county or regional jail in this state, and shall have the power to obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision thereof.

(l) 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.

⁴West Virginia Code § 62-12-23 requires the board to send a notice to the victims of the offenses for which the inmate is incarcerated, "[a]t least forty-five days prior to the date of a parole hearing. . . The notice shall state that the victims of the crime have the right to submit a written statement to the parole board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. 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."

Rules of the West Virginia Parole Board

(m) Prior to making such recommendation for pardon, reprieve or commutation and prior to releasing any inmate on parole, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation or parole.

(n) Any person released on parole shall participate as a condition of parole in the litter control program of the county to the extent directed by the board, unless the board finds that this alternative service would be inappropriate. (1939, c. 27, § 13; 1953, c. 62; 1955, c. 42; 1976 c. 100; 1979, c. 87; 1981, c. 69; 1986, 1st Ex. Sess., c. 11; 1988, c. 84; 1997, c. 77; 1998, c. 223; 1999, c. 81.)

West Virginia Parole Board

2001 AUG 23 P 1: 54

Procedural Rules

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(Revised - _____)

Section 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

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

1.3 FILING DATE

1.4 EFFECTIVE DATE

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 West Virginia Code, Sections 62-12-13, 62-12-14 and 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 November 1, 1983.

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Section 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.
- 2.3 The word "Officer" shall mean a Parole Officer under the employ of the West Virginia Division of Corrections.
- 2.4 The words "criminal violation" shall refer to a violation of any condition of the Parole Agreement which provides that parolees shall not violate any criminal laws of the United States, or any State or Municipality.
- 2.5 The words "technical violation" shall refer to a violation of any other conditions of parole.
- 2.6 The word "Division" shall refer to the West Virginia Division of Corrections.
- 2.7 The word "institution" shall refer to either the Mount Olive Correctional Complex, the Huttonsville Correctional Center, the Pruntytown Correctional Center, the Denmar Correctional Center, the Northern Regional Jail and Correctional Facility, the Beckley Work Release Center, the Charleston Work Release Center, the Huntington Work Release 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.

Section 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.

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3.2 METHOD OF DECISION

Three members of the Board, which constitutes a quorum for conduct of business, shall make all decisions by a concurring vote of at least two members.

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

3.3 PRIVACY OF DECISIONS

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

Section 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.

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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).

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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.

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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 distinct 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.

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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.

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.

Section 5. Interviews of Inmates

5.1 INTERVIEW SCHEDULES

Inmates who become eligible for parole shall be given an interview by 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.

In cases of emergency, one board member can conduct the interview. The interview shall be recorded by magnetic tape or other reliable means which shall then be reviewed by two other board members for their decision. Interviews may be conducted by means of video teleconference in compliance with statutory requirements.

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 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.

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- 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.

- c. The Board, 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.

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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.

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

If the Board 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.

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5.5 TIME AND PLACE OF INTERVIEW

All parole interviews shall be held either at the Mount Olive Correctional Complex at Mount Olive, the St. Marys Correctional Center, the Ohio Correctional Center, the Anthony Correctional Center, the Huttonsville Correctional Center at Huttonsville, the Pruntytown Correctional Center at Grafton, the Denmark Correctional Center at Hillsboro, the Northern Regional Jail and Correctional Facility at Moundsville, the Beckley Work Release Center at Beckley, the Charleston Work Release Center at Charleston, the Huntington Work Release Center at Huntington, any regional jail or at the offices of the Board in Charleston.

Interviews may, in special circumstances, be held at a hospital or any city or county jail 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 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. 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 Board 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 therefor;

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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 Board by institutional authorities concerning physical, mental or psychiatric examinations of the inmate conducted by either the Division of 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.
- b. The inmate shall be supplied with copies of all documents to be considered by the Board, 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 Board may conduct the interview without any of the aforementioned documents and reports, provided that a written statement indicating the

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reason for the Board 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 Board an opportunity to observe the demeanor of the inmate and pose questions to him or her. 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 Board 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 Board 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 an 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 Board shall consider, and rebut any information which the inmate believes is false or inaccurate.

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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 Board document, affidavits or letters.

The inmate may also ask that the Board 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 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 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.

- 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 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.

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

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:

- 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

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- 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.
- 6.9 The Board 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 Board 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.

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 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.

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

The inmate may also request, by writing a letter, that the 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:

- 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. 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 Board during that extension requesting an earlier parole interview.

The Board will inform the inmate of its decision in writing. After the interview, the Board may postpone its 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 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 Board believes may improve the inmate's likelihood of favorable parole consideration or improve the rehabilitation potential of the inmate.

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If the Board decides to grant parole, it shall issue written notification thereof, which shall be given to the inmate with a copy to the Deputy Commissioner of the Division of Corrections.

Section 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 Board used to reach the parole decision. Whereupon the Board 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, 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, is accurate, and if so, whether rescission is warranted.

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- 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.
- e. Staff may be present at their own volition to testify; the Board 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.

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, 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 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

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11.1 REPORT OF CHARGE

- a. 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.

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- 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. Notwithstanding the foregoing, the Board shall convene a revocation hearing only if it receives the aforementioned documentation 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 ceased 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 cease 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 shall make a written statement to the Board 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, the Board 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 Board chooses not to hold a hearing shall be dismissed.

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- 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 the thirtieth day 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 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 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 any 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.**

11.3 NOTICE OF REVOCATION HEARING

Whenever 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 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 Board finds good cause for not allowing such confrontation.**

The Board shall send notice to the parolee and to his attorney, if the existence of one is known. The method of delivery shall be either by certified mail, return receipt

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requested, or by delivery of the notice by personal service by hand. Notice shall be served at least five (5) days before the hearing.

Section 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.

Section 13. Procedure at Revocation

13.1 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 the rules.

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 parole officer designated by the Deputy Commissioner shall be present to present evidence and proof of the charge(s).

13.3 ATTENDANCE OF WITNESSES

Neither the Board nor the Division enjoys subpoena power and therefore, neither the parole officer nor the parolee may compel the attendance of witnesses. Both the parole officer and the parolee shall be permitted to have voluntary witnesses. Witnesses may be excluded from the hearing except for giving testimony in compliance with Section 13.08 of these Rules.

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13.4 CONTINUANCES

Continuances may be granted by the Board to either the presiding member, the parole officer, or the parolee, for good cause.

A motion for a continuance shall be made in writing before the hearing. Such motion in writing should be made two (2) days prior to the hearing date to prevent inconvenience to victims or others and waste 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 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.

He or she 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 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.

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- 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. Either 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:

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- 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 shall not be admitted, except when:
 - 1. It is both reliable and trustworthy in its source and 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,
 - 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,
 - 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 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.

The presiding member 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:

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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.
 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 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. 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.
 - 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 a crime.
 - g. Proof of a charge of parole violation cannot rely on 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.
 - h. 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.
 - 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.

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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 parole officer to prove the parole violation. Where there are factual disputes on key issues in a parole revocation hearing, the Board shall set forth a statement on how and why the dispute was settled in a certain way to assist in judicial review.

Section 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.

Section 15. Decision by the Board

- 15.1 The presiding member shall prepare a written summary of the revocation hearing, giving his findings and recommendations, a description of the evidence and testimony presented as to each charge, together with his findings with respect to each charge.

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

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- 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.

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

If the Board 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 Board need not describe the evidence for those charges of which the parolee was found not guilty.

15.3 If the Board 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.

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Section 16. Revocation Procedure

If the Board 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.

The formal Order of Revocation issued by the Board 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 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.

The Board 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.

Section 17. 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.

TITLE 92
PROCEDURAL RULES
BOARD OF PROBATION AND PAROLE
(West Virginia Parole Board)

SERIES 1
RULES OF THE BOARD OF PROBATION AND PAROLE
(RULES OF THE WEST VIRGINIA PAROLE BOARD)

§92-1-1. General.

1.1. 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. 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, section thirteen, article twelve, chapter sixty-two, section fourteen, article twelve, chapter sixty-two, section sixteen, article twelve, chapter sixty-two, section nineteen, article twelve, chapter sixty-two. Accordingly, these rules are hereby designated as legislative rules, in accordance with section two-d, article one, chapter twenty-nine-a of the West Virginia Code.

1.01 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) (These rules and regulations are promulgated under authority of West Virginia Code, Chapter 62, article 12, section 13-C.

1.3. Filing Date. -- August 31, 1983 (These rules and regulations are promulgated on the _____ day of _____, 2001 and filed in the Secretary of State's Office on the _____ day of _____, 2001.

1.4. Effective Date. -- November 1, 1983 (These rules become effective on _____, 2001.)

1.05 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 West Virginia Code, Sections 62-12-13, 62-12-14 and 62-12-19. Accordingly, these rules are hereby designed as procedural rules in accordance with West Virginia 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 West Virginia Code 29A-1-3.

§92-1-2. Definitions.

Blue ink = changes/
revisions made to
1983 rule (2001)
Red ink = deletions
since first revision/
approval

1983
Procedural Rules
of West Virginia
Board of Probation
and Parole

(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 (West Virginia Parole Board).

(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.

(g) The word "institution" shall refer to either the Mount Olive Correctional Complex, the Huttonsville Correctional Center, The Prunytown Correctional Center, The Denmark Correctional Center, the Northern Regional Jail and Correctional Facility, the Beckley Correctional Center, The Charleston Work Release Center, the Huntington Work Release Center or any other location designated by the State of West Virginia as a correctional facility including regional jails.

(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.

(i) The words "working days" shall refer to Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, but not include legal State Holidays.

§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 which it may issue.

3.2. Method of decision. -- The Board shall make all decisions by a concurring vote of at least two (2) members. No inmate shall be granted parole without the consent of two (2) members, and no parolee shall have his parole revoked without the consent of two (2) members. (Three members of the Board, which constitutes a quorum for conduct of business, 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)

3.3. Privacy of decisions. -- All deliberations and votes of the Board 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 must have served the minimum term of his sentence.

(2) If the inmate is serving a determinate sentence, he must have served one third (1/3) (one-fourth[1/4]) of his 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 (10) years of his sentence.

SEE THE END OF THIS SECTION FOR REVISED ORDER AND NEW ADDITIONS

(4) If the inmate is serving a sentence which has been designated in the committing court's sentencing/commitment order as "Life with Mercy," and has been convicted of felony crimes, twice before, he must serve fifteen (15) 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) If the inmate so committed or attempted to commit the crime of robbery as defined in section twelve, article two, chapter sixty-one of the West Virginia Code, he shall be eligible for parole either when he has served five (5) years of his sentence or when he has served one third (1/3) of his sentence, if it is a determinate sentence, whichever of the two (2) is greater in length.

(B) If the inmate so committed or attempted to commit any other act, and was convicted of a felony under any section of the West Virginia Code, other than section twelve, article two, chapter sixty-one, then he shall be eligible for parole after he has served three (3) years of his sentence.

(C) 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 the West Virginia Code, subparagraph (B), subdivision (1), subsection (a), section thirteen, article twelve, chapter sixty-two.

(6) If the inmate is serving two (2) or more sentences concurrently, he shall be eligible for parole consideration after he has served the longest of the minimum terms. If one (1) of the sentences is a determinate sentence, then he shall serve one third ($1/3$) of that sentence in order to be eligible: Provided, That such is longer than the minimum sentence for any concurrent indeterminate sentence.

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

(7) If an inmate is serving two (2) consecutive sentences, then the time of his parole eligibility shall be computed by adding together the minimum terms of the sentences. If one (1) of the sentences is a determinate sentence, then eligibility shall be computed by adding a number equal to one third ($1/3$) of the determinate term to the minimum term of the other sentences. If the inmate is serving two (2) determinate sentences consecutively, then eligibility shall be computed by adding a number equal to one third ($1/3$) of one (1) determinate term to a number equal to one third ($1/3$) of the second term.

Example: An inmate serving a one (1) to ten (10) year sentence consecutively with a three (3) to eighteen (18) year sentence is eligible after he serves four (4) years. An inmate serving a three (3) to eighteen (18) year term consecutively with a determinate sentence of twenty (20) years must serve nine (9) years and eight (8) months. An inmate serving two (2) consecutive determinate sentences of thirty (30) years apiece must serve twenty (20) 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.

(4) 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.

(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 offense 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. (West Virginia Code 60A-4-406).

(7) Notwithstanding any other provision 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:

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

(ii) If the inmate so committed or attempted to commit any other act, and was convicted of a felony under any section of the west Virginia 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.

(iii) 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 five 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, (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 is 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.

(A) 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 the West Virginia Code, section thirty-one, article five, chapter twenty-eight, but has not reached parole eligibility, then he shall be discharged.

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

4.2. Eligibility based on prison (institutional) 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 (3) months prior thereto. The loss of parole eligibility shall be temporary; the inmate shall have his parole eligibility postponed until the fourth (4) month after the month in which the rule violation occurred.

(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 distinct from administrative segregation, shall be eligible for parole. Such an inmate shall become eligible in the first full month after (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 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.

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

§92-1-5. Interviews of inmates.

5.1. 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 sole discretion of the Board. In cases of emergency, one Board member can conduct the interview. The interview shall be recorded by magnetic tape or other reliable means which shall then be reviewed by two other Board members for their decision. Interviews may be conducted by means of video teleconference in compliance with statutory requirements. No inmate shall have the right to an interview on any particular day. 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, (When an inmate first becomes eligible for parole, he or she...) shall be interviewed by the Board in (during) the month (in which he or she...) he becomes eligible.

Example: An inmate who was sentenced to a term of three (3) to eighteen (18) years (with an effective sentence date of January 14, 1995...) on January 14, 1985, shall have an interview scheduled for some date (during the month of January 1998.) 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 (12) 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 (12) month thereafter, except as otherwise provided for herein.

(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.

(c) The Board, 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 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.

5.02 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 and the prosecuting attorney, and the investigating or arresting police officer, so that they may comment on the appropriateness of granting parole. The notice shall be mailed at least ten (10) 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; Victim's 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 the parole hearing, the Board shall notify those persons listed on the "Parole Hearing Notification Form" of the date, time and place at which the 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 regarding the propriety of 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 Board shall inquire during the parole hearing as to whether the victims of the crime or their representatives are present. If so, the Board shall permit those persons to speak.

If the Board 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.

5.4. changed to (5.05) see specific changes at the end of this paragraph 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.

Time and Place of Interview -- All Parole interviews shall be held either at the Mount Olive Correctional Complex at Mount Olive, the St. Marys Correctional Center, the Ohio Correctional Center, the Huttonsville Correctional Complex at Huttonsville, the Pruntytown Correctional Center at Grafton, the Denmark Correctional Center at Hillsboro, the Northern Regional Jail and Correctional Facility at Moundsville, the Beckley Work Release Correctional Center at Beckley, the Charleston Work Release Center in Charleston, the Huntington Work Release Center in Huntington, any regional jail facility or at the offices of the West Virginia Parole Board in Charleston.

Interviews may, in special circumstances, be held at a hospital or any city or county jail 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 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. Parole interviews are open to the public except insofar as restrictions on attendance may be required for security reasons or institutional management considerations.

5.5. (changed to 5.06) Consideration of documents at interviews.

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

(1) (A current...) 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 records, his participation in (therapeutic, treatment and educational programs and overall conduct.) rehabilitative and educational programs and his conduct.

(3) The inmate's record of all proven violations of institutional Disciplinary Rules.

(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 therefor;

(4) Reports prepared by institutional authorities (concerning...) 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 (convicted...)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. (...and when applicable, toward the parole officer and toward any or all Parole Board members.)

(5) Reports submitted to the Board by institutional authorities of physical, mental and psychiatric examinations of the inmate conducted by either the Department (Division) or other (appropriate...) agencies or professionals.

(6) Sections of pre-sentence reports or post-sentence investigation 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 investigation 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 home confinement, probation or parole.

(b) The inmate shall receive (be supplied with...) copies of all documents to be considered by the Board with the exception of those described in subsection (5) and (6), Section 5.5 of these rules, 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. They must be delivered to the inmate at least fourteen (14) 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 date of delivery shall be noted and the executed acknowledgement shall be sent to the Board. 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: Provided, That a written statement (indicating) of why the (thereasonthe...) Board has decided to proceed without them is prepared, signed by all 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 12 [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.

5.6. 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 or her. 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 the West Virginia Code 62-12-13.

(b) At the commencement of the interview, the Board shall:

(b) During the course of the interview, the Board shall:

(1) Interrogate the inmate to insure (ensure copies of all documents to which the inmate is entitled to receive under Rule 5.06 were received) that he has received copies of all documents to which he is entitled under Section 5.5 of these rules. If the Board 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 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 or inaccurate. 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. (The inmate...) 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 (relates) is germane 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.

(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.

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 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. 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 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

(a) Whether the inmate has been found guilty of violating Class I or Class II institutional disciplinary rules, and

(b) whether the inmate has participated in institutional education, work, therapeutic or treatment programs, or rehabilitative programs, and

(c) 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) his parole or probation revocation, and

(d) The sentiment expressed by members of the community, victims of the crime committed by the inmate, 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 (the) his interview and the attitudes expressed then with regard to his (prior) 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.

(i) The Board will consider positive and negative factors in all the aforesaid areas and not confine its inquiry to particular areas to the exclusions of others

The board 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.

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.

§92-1-7. Waiver of interview.

The inmate may waive a parole interview either by writing a letter setting forth (the) his 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 a receipt of either a letter or waiver the Board will treat the inmate's case as (a flat denial) if he had been denied parole. The inmate may also request by writing a letter that his parole interview be postponed for one (1) or more months. The Board in its discretion may grant or deny a postponement.

§92-1-8. Decision 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 (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 one 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 Board during that extension requesting an earlier parole interview.

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 that the Board believes may improve the inmate's likelihood of favorable parole consideration or improve the rehabilitative potential of the inmate. 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 of the Division of Corrections.

§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) his interview and before (the) his actual release from the institution, or if any information becomes available to the Board which contravenes the evidence the Board used to reach the parole decision. Whereupon the Board shall immediately issue a notice of temporary rescission.

9.2. Procedures for rescission.

(a) Upon the receipt of a written report from the (Division of Corrections) Department that the inmate has committed any such 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 a rescission hearing can be held.

(b) within one (1) 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 (5) days prior thereto. The notice shall set forth the grounds upon which rescission may be based.

b. Within forty-five (45) days of issuance of the written hold, the Board shall hold a rescission hearing at the institution, or other convenient location, for the purpose of determining:

- (i) 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,
- (ii) Whether the new information which contravenes the evidence used to reach the parole decision, is accurate, and if so, whether rescission is warranted.

(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.

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 (5) 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.

E. Staff may be present at their own volition to testify; the Board 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 present evidence as to the circumstances of the violation or other mitigating factors.

§92-1-10. 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 Board or by the Division) Department. A court order finding the 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 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.

§92-1-11. Prerequisites to revocation hearing.

11.1. Report of charge.

(a) The Board shall convene a revocation hearing only if it receives from the (Division) 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.

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 transcript of a preliminary revocation hearing on the charges and a written attestation by the hearing examiner as to the accuracy of the transcript.

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

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

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.

(c) 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 each 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.

2.

(b) (d) Notwithstanding the foregoing, the Board shall convene a revocation hearing only if it receives the aforementioned report and transcript no later than the forty-fifth (45) thirty-fifth (35) working day 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 (45) thirty-five (35) working 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 (cease) stop the running of the forty-five (45) thirty-five (35) working 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 custody of a jail or the supervision of the (Division) Department.

The (Division) Department shall make a written statement to the Board explaining the facts and circumstances of any of the four (4) aforementioned causes for (cessation) stopping the running of the forty-five (45) thirty-five (35) working day period.

11.2. Decision to hold hearing.

(a) Upon receipt of the (aforementioned requisite documentation, ...) report and transcript, the Board shall consider such and determine by vote whether to hold a revocation hearing and, if so, (with respect to which charges.) 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 (1) of its own members to preside thereat. The revocation hearing shall in any event be held no later than (the thirtieth working day following the date...) thirty (30) days after 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, upon which a written waiver of the preliminary hearing is executed.

(c) (When the Board receives a report from the Division that indicates a parolee has been charged with a criminal offense...) 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.

11.3. Notice of revocation hearing.

(Whenever) 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 (1) is known. The method of delivery shall be either by certified mail, return receipt requested, or by delivery of the notice by personal service by hand. or by arranging for an officer to deliver the notice by hand. Notice shall be served at least five (5) days before the hearing.

§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 a lay person. If the parolee is indigent, he has the right to have an attorney appointed for him through the office of the Circuit Court, as provided in West Virginia Code, section twenty-two, article twelve, chapter sixty-two. A continuance may be allowed to allow the parolee to obtain counsel if he does not have counsel and desires (the services of counsel.) it.

§92-1-13. Procedure at revocation.

13.1. Presiding member. -- One (1) 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.

13.2. 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 officer designated by the Deputy Commissioner shall be present to present evidence and proof of the charge.

13.3. Attendance of witnesses. -- Neither the Board nor the Division Department enjoys subpoena power and, therefore, neither the Parole Officer nor the parolee may compel the attendance of witnesses. Both the Parole Officer and the parolee shall be permitted to have voluntary 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 Board to either the presiding member, the Parole Officer or the parolee for good cause. (A motion for a continuance shall be made in writing before the hearing. Such motion in writing shall be made two (2) days prior to the hearing date to prevent inconvenience to victims or others and waste 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.) 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, (but not be limited to...) 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 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 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 or she 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 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 Parole 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 (following which...) and, afterwards, the parolee may (present) put on evidence in his own defense. Proof of the violation shall be by a preponderance of the evidence as set forth in Section 13.10 of these Rules. 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) Either 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 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 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 (reasonable) responsible persons are accustomed to rely (in the conduct of) in serious affairs. In any event (the presiding member) he shall resolve disputes concerning 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'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 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,

(4)(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 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 and there are indications that such evidence is reliable and trustworthy. 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 Parole Officer, or other competent witness, an affidavit of the informant, or a private examination of the informant from which the parolee (maybe excluded if the justifications set forth in Section 13.08 are present.) 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 (is) was prepared by a person with direct knowledge of relevant facts and who is unable to appear to testify, (provided that) providing 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.

(2) The document was prepared by and within the scope of duty of a public employee, excepting an 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 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. 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

(e)(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 a crime.

(f)(g) Proof of a charge of parole violation cannot (rely on) be 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 evidence, either direct or circumstantial, (to prove the charge.) of the charge. Documentary evidence of the type described in subsection (e)(f) 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 Parole Officer to prove the charge of parole violation. Where there are factual disputes on key issues in a parole revocation hearing, the Board 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.

(a) The parolee may waive the final revocation hearing. He may also waive the five (5) 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 of the final revocation hearing is as follows:

- (1) 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.
- (2) 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.

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

(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.

§92-1-15. Decision by the board.

(a) The presiding member shall prepare a written summary of the revocation hearing, giving his findings and recommendations, a description of the evidence and testimony presented as to each charge, together with his findings with respect to each charge. Upon review of the hearing transcript of receipt of waiver of the hearing, the Board may decide the case either by:

(1) Finding the parolee (not guilty) innocent of all charges and reinstate him to parole, or

(2) Finding the parolee guilty of one (1) or more charges and revoke his parole, or

(3) Finding the parolee guilty of one (1) or more charges and reinstate him to parole with or without additional and special conditions.

(b) The Board shall prepare a (notice in which it shall state its decision with respect to each charge...) 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 (notice a description...) letter of decision a description of the evidence (it considered in arriving at the finding of guilt) upon which the finding of guilty is based.

The Board (need not describe the evidence...) shall not set forth a description of evidence for those charges (of) upon which the parolee (was found not guilty.) has not been found guilty.

(c) If the Board (decides) has decided not to revoke parole, it shall send the (notice) letter of decision to the parolee, his attorney, the parole officer and the Deputy Commissioner, advising of the decision.

§92-1-16. Revocation procedure.

SEE THE END OF THIS SECTION FOR THE COMPLETE ADDITIONS/REVISIONS

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.

If the Board 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.

The formal Order of Revocation issued by the Board shall state:

- a. The parolee's name and Division of Corrections 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 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.

The Board 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.

Section 17. 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.