

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Regional Jail and Correctional Facility Authority TITLE NUMBER: 94

CITE AUTHORITY: 31-20-31

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Work Program for Regional Jail Inmates

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

WEST VIRGINIA CODE OF STATE RULES
TITLE 94. WEST VIRGINIA REGIONAL JAIL & CORRECTIONAL FACILITY
AUTHORITY
LEGISLATIVE RULE (SERIES 8)
SERIES 8. WORK PROGRAM FOR REGIONAL JAIL INMATES

§94-8-1. General.

1.1 Scope. -- This legislative rule establishes a work program for qualified inmates under the custody and control of the West Virginia Regional Jail & Correctional Facility Authority.

1.2 Authority. -- West Virginia Code §31-20-31

1.3 Filing Date. --

1.4 Effective Date. --

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GENERAL
STATE OF WEST VIRGINIA
SECRETARY OF STATE
FILED

§94-8-2. Definitions.

2.1 Qualified Inmate. -- An inmate who classifies as low risk to facility security and public safety, as determined through selection criteria as set forth in Regional Jail Authority policy to participate in a work program. A qualified inmate does not include an inmate convicted of a sexual offense or a violent felony. Inmates sentenced to the Division of Corrections, the Commissioner of the Division of Corrections or designee shall first determine the eligibility for such inmate for participation in the work program.

2.2 Work Program. -- A program to provide qualified inmates with community service work projects with governmental entities, non-profit organizations, and/or be employed with

local businesses. The program is designed for life skills development, offender accountability and restorative justice which entails offenders giving back to the communities. The Executive Director or designee shall determine the project priorities for work crews.

- 2.3 Classification. -- A process for determining the appropriate security placement and special needs of the inmate population in order to provide a safe and humane correctional system for the public, staff and inmates.

§94-8-3. Applicability.

3.1 This rule is applicable to inmates housed in the WV Regional Jails..

3.2 Division of Corrections inmates domiciled at a Regional Jail may be eligible for consideration for work programs, provided that the Commissioner of Corrections or designee first determines the eligibility of such inmate for participation in the work program and consents to such inmate's participation therein.

3.3 This legislative rule and the work program does not apply to any inmate(s) incarcerated under the jurisdiction of the United States Marshals Service, the Federal Bureau of Prisons, the Immigration and Customs Enforcement Service or any other federal incarcerating agency, inmates held on detainers from other states, or held for the benefit of any jurisdiction outside of the sovereignty of the State of West Virginia.

§94-8-4. Eligibility, Terms and Conditions for Work Program.

4.1 The Executive Director shall establish policy for classification, selection, and eligibility criteria for qualified inmates to participate in work program. Eligibility, terms and conditions shall include, but not be exclusive to:

4.1.1. Classified minimum custody.

- 4.1.2. Inmates must have a sentence of at least 30 days
- 4.1.3. A conduct review has been conducted and the classification staff have deemed the inmate's conduct to be appropriate for a community work program, in accordance with the classification policies.
- 4.1.4. Inmates sentenced to the Division of Corrections must first be approved by the Commissioner or designee, and consent must be given by him/her.
- 4.1.5. Inmates who violate Rules of Conduct or terms and conditions of the work program may be subject to removal from the program and disciplinary action in accordance with policy and procedures.

4.2 Inmates convicted of a sexual offense or violent felony are not eligible for a work program.

4.3 Inmates who are denied to participate in a work program may appeal such denial through the Regional Jail Authority Inmate Grievance Procedure.

4.4 Regional Jail Administrators shall have the discretion to remove any inmate from a work program should he or she determine that the inmate poses a threat to public safety and/or facility security. This decision may be appealed by the inmate through the established Inmate Grievance Procedure.

§94-8-5. Financial Responsibilities

5.1 The Administrator or designee of each Regional Jail shall receive, receipt and take charge of the money of all inmates, all money sent to the inmates or earned by the inmates as compensation for work performed.

5.2 The money of all inmates shall be maintained as set forth in West Virginia Code §31-20-31.

5.3 For each inmate sentenced to the Division of Corrections participating in a work program authorized by this section, the

administrator or designee of the regional jail facility shall keep in an account at least ten percent of all money earned during the inmate's incarceration and pay the money to the inmate at the time of the inmate's release.

- 5.4 The Executive Director shall develop a policy that outlines the formula for the distribution of the qualified inmate's income. The administrator or designee shall deduct from the inmate's income, for distribution, an amount not to exceed forty percent in the aggregate for: an administrative fee of \$1.00, court-ordered financial obligations including, but not limited to, court fees, victim restitution, child support obligations owed under a support order, and liens. The following is a general guideline for distribution.

Administrative fee of \$1.00

20% Child Support Enforcement

10% Victim Restitution

10% Court Fees/Court-ordered deductions, etc.

If one item is not owed, then the allowance for that item is to be split equally between the remaining deductions. If only one deduction is owed, then the full 40% will be paid to the deduction.

- 5.5 The remaining balance of the qualified inmate's account after deductions in Section 5.3 and 5.4 will be used to pay any WVRJA required financial obligations. This shall include, but not limited to, incarceration costs and any restitution for facility rule infractions. Incarceration fees for inmates who are assigned community service projects with governmental entities or non-profit organizations and who may be receiving minimal compensation will be 30% of their income. Incarceration fees for inmates, who are employed in the private sector, will be determined by policy sliding scale and the ability to pay. Such fees collected will be credited to the responsible billing jurisdiction for said inmate.

- 5.6 Provided that all court-ordered financial obligations provided in sections 5.3, 5.4, and 5.5 of this rule have been paid, the administrator or designee of a regional jail facility, upon request of an inmate to release funds on behalf of the family of

the inmate, may authorize the release of funds up to one half of the money earned by the inmate participating in a work program as authorized by this rule.

- 5.7 The remainder of the inmate's money, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times of his or her release, or as soon as practicable after departure. Provided, that if an inmate is transferred to the physical custody of the Commissioner of the Division of Corrections, at the time he or she leaves the regional jail facility, the administrator or designee shall deliver moneys and earnings then credited to the inmate to the Commissioner of the Division of Corrections or designee. In case of the death of the inmate, before authorized release from the Regional Jail facility, the administrator or designee shall deliver the property to the inmate's lawful representative. In case a conservator is appointed for the inmate, while he or she is domiciled at the Regional Jail facility, the administrator shall deliver to the conservator, upon proper demand, all monies and personal property belonging to the inmate that are in the custody of the administrator.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Work Program for Regional Jails

Type of Rule: Legislative Interpretive Procedural

Agency: WV Regional Jail and Correctional Facility Authority

Address: 1325 Virginia Street East
Charleston, WV 25301

Tony Davis, Chief Financial Officer

Phone Number: 304 558 2110, ext 2019 Email: t.davis@wvrja.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The passage of this rule will not increase cost. Any revenues generated from this program may help maintain the per diem cost at its current level.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR | | | |
|------------------------------------|--|-------------------------------------|---|
| Effect of Proposal | Current Increase/Decrease (use "-") | Next Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | | | |
| Personal Services | | | |
| Current Expenses | | | |
| Repairs & Alterations | | | |
| Assets | | | |
| Other | | | |
| 2. Estimated Total Revenues | | | |

Rule Title: _____

Rule Title: Work Program for Regional Jails

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.


Since this is a new program, there is no historical data available to determine what the economic impact will be. This program may provide assistance for some county jurisdictions to offset their jail costs by requiring participating inmates to be responsible for up to half of their daily per diem costs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Regional Jail & Correctional Facility Authority
1325 Virginia St, East
Charleston, WV 25301
304-558-2110

LEGISLATIVE RULE TITLE: Work Program for Regional Jail Inmates

1. Authorizing statute(s) citation 31-20-31

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 27, 2007

b. What other notice, including advertising, did you give of the hearing?
Legal ads in newspapers and our website.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 27, 2007 @ 8:00 am

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

WV Regional Jail & Correctional Facility Authority

Chad M. Cardinal Esq., General Counsel

1325 Virginia St, East

Charleston, WV 25301

304-558-2110

- g. **IF DIFFERENT FROM ITEM 'F'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 27 2007 through July 27, 2007 @ 8:00 am

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 27, 2007

d. Attach findings and determinations and reasons:

Attached

PUBLIC COMMENTS FINDINGS AND DETERMINATIONS

Public Comments from aretired_mom@yahoo.com

aretired_mom@yahoo.com commented: "I vote no if they wanted to work they should have thought about sooner."

Agency's Response

No change in proposed rule is warranted as the program is authorized by W. Va. Code § 31-20-31.

Public Comments from Inmate Wilfred Spencer

Inmate Wilfred Spencer, from the Northern Regional Jail and Correctional Facility comments that the security criteria selection of inmates for placement in the program are too stringent, and that it is easier for an inmate to make parole than to be selected for a Work Release Program.

Agency's Response

No change in the Proposed Rule is warranted. The selection criteria are based upon concerns for the public safety as well as the inmates rehabilitation.

From: "Tony Davis" <tdavis@wvrja.state.wv.us>
Subject: **FW: work program for regional jail**
Date: June 29, 2007 7:53:29 AM EDT
To: "Chad M. Cardinal" <ccardinal@wvrja.state.wv.us>

Shoud I be getting this?

Tony W. Davis

Administrative Services Manager II

WV Regional Jail Authority

Phone: 304-558-2110

Fax: 304-558-3993

Email: tdavis@wvrja.state.wv.us

From: betty vanhorn [mailto:aretired_mom@yahoo.com]
Sent: Thursday, June 28, 2007 1:05 PM
To: tdavis@wvrja.state.wv.us
Subject: work program for regional jail

I vote no if they wanted to work they should have thought about sooner

aretired_mom@yahoo.com

Get the Yahoo! toolbar and [be alerted to new email](#) wherever you're surfing.

7-15-07

Dear Mr. Cardinal,

I am writing to you in reference to your request for comments on proposed rule "94 CSR 8 Work Release for Regional Jail inmates".

I am currently in the Northern Regional Jail and I am serving a 2 to 20 year sentence for two counts of B+E. I have been here for 14 months. I will probably have my parole hearing here next May.

Under the proposed rules eligibility requirements it states that an inmate must be classified "minimum custody".

That seems an obvious standard, however, myself and others similarly situated will probably never meet that standard.

In my case it is more likely that I will be paroled than it is that I would ever qualify for work release.

The selection for these types of programs is usually based on criteria that is so stringent that it is unlikely that an inmate would not be paroled before, or soon after, the program was offered.

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This seems backwards to me. It seems that it would be more beneficial to the public and to the inmate if it were a requirement that each inmate spends at least 6 months in work release before he is parole eligible.

This would allow for a controlled and gradual reintegration into society where an inmate could prove his ability to resist the temptations that led him to jail in the first place.

Inmates that are unable to resist those temptations would be more likely to be quickly caught in a work release environment than they would be after they are paroled.

It just doesn't make sense to take an inmate directly from a jail cell where he has been housed for years and has adapted to a completely different environment and turn him loose on an unsuspecting public.

One of the harshest realities of incarceration is the realization that the rest of the world goes on just fine without you. It is much like death in that way. It is a real challenge to your sense of self worth.

(3)

Being released into a society that you have come to realize has no use for you changes your perspective.

Having work release as a buffer zone would enable inmates to reestablish a sense of being an integral part of society before being released.

Ostensibly parole is merit based. The same should be said of work release. It ought not be possible to be deemed suitable for parole yet unsuitable for work release.

Nobody would want to seem responsible for enabling an inmate to attain work release if he commits a crime while on that release. But an inmate that does commit a crime while on work release would most assuredly have done so anyway after parole.

At the end of the day the question is this; is it better to say the inmate was released because you felt he had served enough time, or is it better to say the inmate was released because after serving time he was placed in work release and after six months of successful participation he was deemed suitable for release?

Sincerely,
Wilfred Spencer
WILFRED SPENCER