

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

Form #5

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2014 AUG -7 P 12:14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Parole Board TITLE NUMBER: 92

CITE AUTHORITY: 62-12-13(g), 29A-1-3(b)

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

29A-1-3(b)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: "West Virginia Parole Board Procedural Rules"
to be amended to "Procedural Rules of the West Virginia Parole Board -
Eligibility, Decisions and Discharge"

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 October 7, 2014

Benito J. Murphy
Authorized Signature

FILED

TITLE 92
PROCEDURAL RULE
WEST VIRGINIA PAROLE BOARD

2014 AUG -7 P 12:14

SERIES 1
PROCEDURAL RULES OF THE WEST VIRGINIA PAROLE BOARD
ELIGIBILITY, DECISIONS AND DISCHARGE

OFFICE WEST VIRGINIA
DEPARTMENT OF STATE

§ 92-1-1. General.

1.1. Scope. -- These rules establish procedures and criteria to be employed by the West Virginia Parole Board when considering eligible inmates incarcerated by the West Virginia Division of Corrections for parole; in granting or denying parole; establishing conditions therefore; and providing a process for reconsideration and extraordinary remedies.

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

1.3. Filing Date. -- August 7, 2014

1.4. Effective Date. -- October 7, 2014

1.5. Purpose. -- The general purpose of these rules and regulations is to establish procedures and criteria whereby the West Virginia Parole Board shall discharge its duties and exercise the powers described and reserved to the Board by the W. Va. Code §§ 62-12-13; 62-12-14; & 62-12-19.

1.6. Repeal and Replace. -- This rule repeals and replaces W. Va. Code R. § 92-1-1, West Virginia Parole Board Procedural Rules effective October 15, 2012.

§ 92-1-2. Definitions.

2.1. "Accelerated Parole" shall mean a release of an inmate upon parole based upon successful completion of that certain program set forth in W. Va. Code §62-12-13(b)(1)(B), provided the Parole Board does not find that the inmate constitutes a reasonable risk to the safety or property of other persons if released, and all other factors in subsections (b)(2-5) of the same section.

2.2. "Board" or "Parole Board" shall mean the West Virginia Parole Board.

2.3. "Chairperson" shall mean the Parole Board Member appointed by the Governor to govern the West Virginia Parole Board pursuant to W. Va. Code § 62-12-12.

2.4. "Contingent Parole" shall mean a release of an inmate upon parole based upon successful completion of conditions within a time frame specified by the Panel.

2.5. "Deferred Parole" shall mean the possible paroling of an inmate with the pending completion of a residential plan with Parole Board approval.

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

2.7. "Foreign Detainer" shall mean a release of an inmate upon parole based upon a detainer lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration.

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

2.9. "Lead Interviewer" shall be a Parole Board Member which shall serve as the Presiding Member over a specific case.

2.10. "Member" shall mean any Member of the Parole Board.

2.11. "Ordinary Parole" shall mean a release of an inmate upon parole based on eligibility relating to service of the minimum required sentence set forth in W. Va. Code § 62-12-13(b)(1)(A) and all other factors in subsections (b)(2-5) of the same section.

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

2.13. "Panel" shall refer to three Members designated by the Chairperson for the purpose of conducting hearings and making determinations pursuant to Section 3.2 below.

2.14. "Victim" means a person who is a victim of a felony, or whose death occurs during the commission of a felony or misdemeanor, or a member of the deceased victim's immediate family, the fiduciary of the deceased victim's estate, or an adult household member residing with the victim.

2.15. "Violation" shall refer to a breach by the parolee of any term or condition of release upon parole.

§ 92-1-3. General Provisions Relating to the Parole Board.

3.1.a. The Parole Board is committed to discharging its responsibilities using contemporary, evidence based practices and strategies. It is committed to ongoing professional development and incorporating new evidence based practices in decision-making and in its interactions with offenders. Equally, it recognizes and supports ongoing professional development of Parole Board staff.

3.1.b. The Parole Board shall:

3.1.b.1. Be sensitive to the concerns of crime victims and the public by reducing the potential of future victimization;

3.1.b.2. Enhance public safety by making informed parole decisions by using parole guidelines consistent with evidence based practices, and exercise professional judgment to assess offenders' discrete, individual factors, to assess readiness for transition into the community;

3.1.b.3. Recognize that the Parole Board, while comprised of individual decision makers, is structured to vote as a "panel," and each panel shall act in the same manner and under the same authority, as the full Parole Board; therefore, the established principles should support decisional consistency;

3.1.b.4. Support the use of a transparent and clear decisional process, and are committed to ensuring that decision-making is carried out in a fair and consistent process through the use of parole guidelines;

3.1.b.5. Recognize that offender risk of reoffending can be reduced and that continued risk reduction can occur through imposing conditions of parole and the application of intermediate sanctioning that target the offender's criminogenic needs;

3.1.b.6. Value evidence based research, data and related decisional best practices by applying them to the decisions of parole, setting conditions, supporting intermediate sanctions, and making decisions to revoke parole;

3.1.b.7. Ascribe to the importance of treating correctional staff, offenders, victims, and the public with respect and dignity;

3.1.b.8. Understand the importance of the wise utilization of finite prison and community resources, through fiscal responsibility, by applying the principles of effective intervention and use of evidence based parole strategies for identifying and prioritizing supervision and treatment for those offenders who pose the greatest and most serious risk to the community;

3.1.b.9. Respond to parole violators by supporting compliance with parole conditions through the timely application of an evidence based graduated scale of sanctions, including a return to confinement;

3.1.b.10. Recognize that the Parole Board and the Division are two parts of one larger system; therefore, the Parole Board supports the order and safety within the Division; and

3.1.b.11. Defer to the sentencing court regarding the issue of appropriate punishment by recognizing that the sentencing court is the arbiter of just punishment.

3.2. Method of Decision. (W. Va. Code §62-12-12a):

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

3.2.b. The Chairperson will designate the Members of each Panel and will assign each Panel such matters as the Chairperson deems proper.

3.2.c. No inmate shall be granted parole without the consent of at least two Members of the Panel.

3.3.a. The presence of an inmates/parolee shall be required at all proceedings unless the inmate/parolee conduct impairs the security and order of the proceedings and it becomes necessary for his or her removal from the proceedings.

3.3.b. The Parole Board shall only consider inmates/parolees who are in an Institution in the custody of the Division.

3.3.c. Notwithstanding subdivisions (a) or (b) above, the Parole Board may, in its discretion, consider in absentia an inmate/parolee who is confined in this State in a nursing home, state hospital, or who is mentally incapacitated, or terminally ill.

3.3.d. The Parole Board may allow for videoconferencing where appropriate to satisfy the attendance requirements as established in subdivisions (a), (b) and (c) above.

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

3.5. Privacy of Deliberations. All deliberations and votes of each Panel shall be made in private.

3.6. Open Meetings Act. Because the Parole Board exercises quasi-judicial functions, the formal requirements of the Open Governmental Proceedings Act (W.Va. Code § 6-9A-1 *et seq.*) do not apply.

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

4.1. Eligibility Based on Incarceration Period.

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

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

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

4.1.a.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 10 years of the sentence.

4.1.a.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 10 years of the sentence. If the crime occurred on or after June 10, 1994, he or she must have served 15 years.

4.1.a.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 15 years of the life sentence.

4.1.a.6. 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 W. Va. Code

§61-8B-3, and it is determined, as provided in W. Va. Code §61-11-19 that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of W. Va. Code §61-8B-3, 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.

4.1.a.7. 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).

4.1.a.8. 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 brandishing a firearm, the inmate shall be eligible for parole consideration in accordance with the following:

4.1.a.8.A. If the inmate so committed or attempted to commit the crime of robbery as defined in W. Va. Code §61-2-12, 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 or her determinate sentence, whichever is greater.

4.1.a.8.B. 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 W. Va. Code §61-2-12, then he or she shall be eligible for parole after he or she has served a minimum of three years of the sentence or the maximum of the sentence, whichever is less.

4.1.a.8.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 W. Va. Code §62-12-13(a)(1)(B).

4.1.a.9. 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, (5 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.

4.1.a.10. 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.

4.1.a.10.A. 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 enhancement is applied), of one determinate term to a number equal to one-fourth, (or one-third if the firearm enhancement is applied), of the second term.

4.1.a.11. 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 or second degree sexual assault, any sexual offense against a minor, or incest, he or she 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.

4.1.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 their discharge date by benefit of Good Time awarded, but has not reached parole eligibility, then he or she shall be discharged.

4.1.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 upon Successful Completion of Accelerated Parole Program. An inmate shall only be eligible for parole consideration if approved and referred to the Parole Board by the Division.

The minimum time served requirements of section 4.1 do not apply if all of the following are met:

4.2.a. The inmate has applied and been accepted into the Division's "Accelerated Parole Program."

4.2.b. The inmate has met the requirements of the current Division's Policy Directive(s) for the Accelerated Parole Program.

4.3. Foreign Detainers.

4.3.a. Notwithstanding the provisions of section 4.1, Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate.

4.3.b. All applications to parole to a detainer for serving a sentence in another jurisdiction shall be considered by the Board and may be summarily denied without hearing. For applicants not summarily denied a hearing shall be scheduled at the discretion of the Board at the inmate's institution with all required notices being provided to all individuals entitled to such notice.

4.3.c. If parole is granted, the inmate shall be released only to the detainer. If the detainer is voided by the authorities who filed it, the Parole Board will be notified and parole will be denied. The inmate will be notified of this decision in writing by the Parole Board.

4.3.d. A denial of parole under this section precludes consideration for parole for a period of one year or until the provisions of section 4.1 are applicable.

4.4. Eligibility Based on Institutional Conduct.

4.4.a. No inmate who is incarcerated in administrative or punitive segregation for disciplinary conduct shall be considered 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.

4.5. Eligibility Relating to Submission of a Release Plan.

4.5.a. All inmates seeking parole must have prepared and submitted to the board a written parole release plan setting forth his or her proposed plans for place of residence, employment and if appropriate, his or her plans regarding education and post-release counseling and treatment, together with a report from the Division of Corrections containing recommendations as to the plan's suitability. A release plan may be substituted by detainer to serve a sentence of incarceration for a year or longer.

4.5.b. In the case of inmates subject to mandatory 30 day notification periods, being offenses 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 board may conduct an initial interview without a release plan. If the Panel does not deny parole, the Decision will be Grant Deferred Parole pursuant to section 8.1.c.

4.6. Detainers.

4.6.a. An inmate, who is subject to a detainer filed by authorities of any state or of the United States, will be eligible for parole.

4.6.b. If parole is granted to an inmate, he or she shall be released 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.

4.7. 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.

§92-1-5. Interviews of Inmates.

5.1. Inmates who meet the applicable eligibility requirements for parole consideration shall be given an interview by a Panel of the Board.

5.2 Pursuant to W. Va. Code § 62-12-13(m), interviews may be conducted by means of video teleconference in compliance with statutory requirements.

5.4 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:

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

5.4.b. An inmate who is not granted parole following the initial interview, shall be scheduled for an additional interview no more than 12 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 12 month intervals, except as otherwise provided for by this Rule.

5.4.c An inmate who is serving a sentence of "Life with Mercy" and is not granted parole following the interview, shall be scheduled for an additional interview no more than 36 months following the month of initial eligibility. Subsequent interviews may be scheduled at up to 36 month intervals, except as otherwise provided for by this Rule.

5.5. Notice to Inmate.

5.5.a. 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.

5.6. Notice to Officials; Notice to Victims in Crimes Not Subject to W.Va. Code §62-12-23 .

5.6.a. Notwithstanding the provisions of section 5.7 of this Rule, written notice of each interview shall be sent to the victim(s), sentencing judge, the prosecuting attorney, and investigating or arresting police officer so that they may comment on the appropriateness of the granting of parole. The notice shall be mailed at least 10 working days prior to the interview. If the sentencing judge is no longer on the bench, written notice will be sent to the chief judge in that judicial circuit.

5.6.b. The Parole Board shall notify the victim(s) and all interested parties of the decision of the Panel. This notice may be made by regular mail, facsimile or electronic mail.

5.7. Notice to Officials; Notice to Victims; Victims' Right to be Heard pursuant to W.Va. Code §62-12-23.

5.7.a. 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 officials and victims of the crime for which the offender was sentenced.

5.7.b. At least 45 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 and place at which a parole hearing will be held. Such notice shall be sent by certified mail, return receipt requested.

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

5.7.d. The Panel of the Board shall inquire during the parole hearing as to whether the victim(s) of the crime are present. If so, the Panel shall permit the victim(s) to speak.

5.7.e. If the Panel grants parole, it shall immediately set a date for the inmate's release and shall notify those persons listed on the "Parole Hearing Notification Form" by certified mail that parole has been granted and indicate the date on which the inmate is to be released.

5.8. Date and Place of Interview.

5.8.a. All parole interviews shall be held at the Institution of confinement. If deemed in the interest of economy and expedience or for any other special circumstance, the Board may designate another secure location. Interviews may, in special circumstances, be held at a hospital or at the discretion of the Board. Individual inmates shall not be scheduled in advance for specific times, unless the

Victim, as mentioned in Section 5.7. of this Rule, has requested to attend the hearing. The Panel of the Board on a given day shall commence with interviews at a prearranged time. Thereafter, shall interview each inmate scheduled for that day in turn. The Parole Board reserves the right to change the order of the schedule. If necessary, interviews may be continued to succeeding days. Parole interviews are open to the public, except as restrictions on attendance may be required.

5.9. Consideration of Documents at Interviews.

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

5.9.a.1. A recent version of the Decisional Packet prepared by the Division. The Decisional Packet shall include, at a minimum, the Regular Case Parole Guidelines and a valid LS/CMI report.

5.9.a.2. A current authentic copy of the inmate's current criminal record. As provided through the West Virginia State Police, the United States Department of Justice or any other reliable criminal information sources.

5.9.a.3. Reports from the institution concerning the inmate's work record, participation in therapeutic, treatment and educational programs, and overall conduct.

5.9.a.4. Reports of the inmate's conduct while incarcerated, to include the record of any and all violations of Class I or Class II institutional disciplinary rules, proved and disposed of, and the sanctions imposed therefore.

5.9.a.5. 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 or her, toward the prosecuting attorney who convicted him or her, toward the law enforcement officers who arrested him or her, toward the crime for which he or she is under sentence, toward his or her previous criminal record and when applicable, toward the parole officer and toward any or all Parole Board Members.

5.9.a.6. Reports submitted to the Panel by institutional authorities concerning physical, mental or psychiatric examinations of the inmate conducted by either the Division or other appropriate agencies or professionals.

5.9.a.7. 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.

5.9.a.8. Sections of pre-sentence or post-sentence investigation reports which state the facts and circumstances of the crime for which the inmate has been convicted.

5.9.a.9. Records pertaining to any previous release of the inmate on home confinement, probation or parole.

5.9.a.10. An approved home plan that was investigated by the Division of Parole Service, reviewed and approved by the Parole Board.

5.9.b. The inmate shall be supplied with copies of all documents to be considered by the Panel, with the exception of those described in subsection (5) and (6) of the preceding section, or any sensitive document that interferes with security considerations. These copies shall be delivered to the inmate by employees of the institution at least 14 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.

5.9.c. The Panel may conduct the interview without any of the aforementioned documents and reports, provided that a written statement indicating the reason for the Panel deciding to proceed without them, is prepared, signed by all interviewing Members, and placed in the inmate's file. *Provided*, if an inmate appears at the parole hearing and no Parole Guideline has been completed, the Board shall delay the hearing until the same has made available.

5.9.d. 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 W. Va. Code §61-8-12 or under the provisions of W. Va. Code § 61-8B-1 et seq. or 61-8C-1 et seq. (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.

5.10. Conduct of the Interview.

5.10.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 the inmate should be granted parole, and to give the Panel an opportunity to pose questions and observe the demeanor of the inmate. Panel Members shall review all aspects of the inmate's criminal record, prison conduct and achievements and all areas of the interview process should be considered prior to a board decision; all hearings shall be fair and appropriate and the decision based on the totality of the findings. The proceedings in the interview shall be recorded electronically, 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.

5.10.b. During the course of the interview, the Panel shall:

5.10.b.1. Question the inmate to ensure copies of all documents to which the inmate is entitled under Rule 5.9 were received. If the Panel learns from such inquiry that the inmate has not received all such documents, it shall give the inmate the choice of either proceeding with the interview, giving him an opportunity to learn the contents of and comment upon the documents not received, or postponing the interview.

5.10.b.2. Allow the inmate an opportunity to comment upon information contained in the documents or reports which the Panel shall consider, and rebut any information which the inmate believes is false or inaccurate. In order to rebut the information, or to present additional information which the inmate believes is relevant, the inmate may present to the Panel documents, affidavits or letters. The inmate may also ask that the Panel delay consideration of the case pending receipt of such documents, affidavits or letters if they are not available at the time of the interview. The Board or its Panel has no responsibility for obtaining such information on the inmate's behalf.

5.10.b.3 Any civilian or public attendees to any form of Parole Board hearing shall only be permitted to bring with them a photo identification.

5.10.c. Thereafter, the Panel shall allow the inmate an opportunity to make a statement as to why he or she should be granted parole. Specifically, addressing as to why the Panel should believe that if he or she were released on parole, he or she could conduct themselves in a lawful manner. Further, that release would not be incompatible with the best interests and welfare of society generally.

5.10.d. Members may ask the inmate any question bearing on the factors considered for a grant or denial of parole. All interviews or questioning shall be conducted professional, fair and impartially manner.

5.10.e. Any person, including the inmate himself, who speaks without permission, or who disrupts the interview may be ordered to leave the room by the Panel. Further, the person may be subject to sanction and/or criminal prosecution.

5.11. Open Meetings Act. Because the Parole Board exercises quasi-judicial functions, the formal requirements of the Open Governmental Proceedings Act (W.Va. Code § 6-9A-1 *et seq.*) do not apply.

§92-1-6. Factors in Decision.

6.1. The Parole Board makes its decisions based upon a structured, informed and evidence based process using formal parole guidelines. In the consideration of release of an inmate on parole, the Panel will consider positive and negative factors in all the aforesaid areas and not confine its inquiry to particular areas to the exclusion of others. In considering whether parole should or should not be granted to any inmate, the Panel shall consider the following factors:

6.1.a. Evidence based factors such as offense severity, risk assessment, program participation/completion and misconduct history. The Parole Guidelines scoring will inform the Panel in the exercise of its discretion; and

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

6.1.c. Whether the inmate has previously been on home confinement, parole, probation, community corrections, or other supervision, and if so, how the inmate behaved thereon and the circumstances of any violations; and

6.1.d. 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

6.1.e. The facts and circumstances of the crime; and

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

6.1.g. The inmate's prior criminal record, if any; and

6.1.h. The results of any available physical, mental or psychiatric examinations. Psychological exams must be conducted for sexual offenders. Other inmates' crimes may dictate a psychological exam be conducted if directed by the Division through their psychological assessment and screening.

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

6.1.j. The suitability of the inmate's proposed release plan. Inmates failing to have tendered a suitable release plan may have their interview postponed so that inquiry regarding the same may be made.

6.1.k. Whether the inmate has been convicted of a new crime while incarcerated, or has been found guilty of violating any Class I or Class II institutional disciplinary rules.

6.1.l. Any other factor which may tend to indicate whether or not the inmate constitutes a reasonable risk to safety or property if released on parole.

6.2. The Panel will consider positive and negative factors in all the aforesaid areas and not confine its inquiry to particular areas to the exclusions of others. The Panel shall assess all factors together to determine whether:

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

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

6.3. In the consideration of release of an inmate on accelerated parole, the Panel must consider all the aforementioned factors, verify eligibility requirements and program completion. If denying parole the Panel must give written rebuttable reasons to justify the denial.

6.4 Special parole considerations for persons convicted as juveniles.

6.4.a. When a person who is serving a sentence imposed as the result of an offense or offenses committed when he or she was less than eighteen years of age becomes eligible for parole pursuant to applicable provisions of this code, including, but not limited to, section twenty-three, article eleven, chapter sixty-one thereof, the parole board shall ensure that the procedures governing its consideration of the person's application for parole ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so that are consistent with existing case law.

6.4.b. During a parole hearing involving a person described in subsection (a) of this section, in addition to other factors required by law to be considered by the parole board, the parole board shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration. The board shall also consider the following:

6.4.6.1. A review of educational and court documents;

6.4.6.2. Participation in available rehabilitative and educational programs while in prison;

6.4.6.3. Age at the time of the offense;

6.4.6.4. Immaturity at the time of the offense;

6.4.6.5. Home and community environment at the time of the offense;

6.4.b.6. Efforts made toward rehabilitation;

6.4.b.7. Evidence of remorse; and

6.4.b.8. Any other factors or circumstances the board considers relevant.

§92-1-7. Waiver of Interview.

7.1. The inmate may waive a parole interview for up to one year, 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 30 days before the interview date unless special circumstances exist for a shorter period. The Board, in its discretion, may grant or deny a postponement.

§92-1-8. Decisions of the Panel.

8.1. The Panel at the conclusion of an interview may decide to:

8.1.a. Grant parole with or without special conditions.

8.1.a.1. If the Panel decides to grant parole, it shall issue written notification thereof, specifying the grant decision and any Special Conditions for supervision of parole, in addition to those specified in W. Va. Code §62-12-17 the Board deems necessary. The Parole Board's conditions will be strictly enforced and will not be voided or invalidated by any entity other than the Parole Board.

8.1.b. Grant contingent parole with additional requirements.

8.1.b.1. If the Panel should decide that parole should be granted, contingent upon additional conditions being met by the inmate prior to his or her release on parole, the Panel may make a contingent grant to parole. All conditions for the release of a prisoner to parole must be clearly set forth by the Panel together with a time frame by which the conditions are to be met. Upon completion of stated conditions, the Chairman of the Board will be notified to grant and issue parole release. Failure of an individual to meet such conditions as specified by the order of the Panel shall constitute grounds for rescission of parole.

8.1.c. Grant deferred parole

8.1.c.1. If the Panel determines the release plan is unsuitable, or it is unavailable at the time of the interview, and determines that the inmate could be a suitable candidate for parole, the Panel shall defer a decision upon parole and place the inmate upon further consideration status. The inmate will then have no more than 90 days to make any corrections to his or her proposed release plan or to otherwise tender a revised release plan. Upon submission of an acceptable release plan, the Panel shall review and vote to determine if the plan is suitable. If the release plan is determined to be suitable the Parole Board will grant parole and authorize release onto parole. Failure to submit a release plan within the 90 day time frame may result in denial of parole. *Provided*, That the Board may extend the period up to 90 days upon a showing of good cause.

8.1.d. Deny parole and schedule an additional interview:

8.1.d.1. If a majority of the Panel, as set forth in section 3.2, shall determine that the inmate should have an additional interview prior to the expiration of 12 months, then the Panel shall proceed to

deliberate the length of time which shall elapse before the next interview. If a majority of the Panel agrees on a specific period of time then that period of time shall be the period for the next interview. If the Panel is unable to agree upon a period of time which is less than 12 months to schedule another interview, then the presiding Member, after causing the same to be duly noted in writing, may poll each Member of the Panel who shall recommend a period of time between 0 and 12 months, and reach the average of the same by adding all recommendations and dividing by the number of Members making recommendations. Once this average is reached, the Panel shall again deliberate to determine if this average can be agreed upon. If the Panel cannot thereafter agree on a date for a new interview, the matter shall be referred to the Chairperson who, in his or her sound judgment shall schedule another interview prior to the expiration of 12 months. The Panel will inform the inmate in the Decisional Communications Packet of the specific reasons for denial and requirements for the next parole review.

8.1.d.2. In the case 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 12 months shall be made only if the Board makes a case specific individualized determination with reasons and findings on the record showing why such extension will cause no detriment or disadvantage to the inmate. An inmate receiving such extension shall be entitled to submit information to the Panel during that extension requesting an earlier parole interview.

8.1.d.3. In the case where an inmate was not provided a parole interview in the initial month of eligibility, the Panel will adjust his or her next parole eligibility date to account for time the inmate was not interviewed. This adjustment will not be made if the inmate is 9 months or further past due for their interview.

8.2. The Parole Board shall provide the Decisional Communications Packet to the inmate which will identify all the guideline factors and countervailing factors supporting the decision. This packet shall contain the specific requirements for the offender if parole is denied, or conditions if parole is granted.

8.2.a. At any time before or after an interview, the Panel may defer consideration until it receives additional information, which it deems necessary to its decision.

§92-1-9. Release or Discharge from Parole.

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

9.1.a. If the Panel denies discharge, they shall issue a written statement as to the reasons for denial and set a date to be reviewed again. The date for the next review shall not exceed a year.

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

§92-1-10. Request for Records.

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

10.2. Recordings of hearings may be requested. Written transcripts of hearings are not undertaken by the Board. If any person desires a copy of an electronic recording of any hearing, he or she must also tender a written request for such recording to the Chairperson of the Board. In the event of a lost or missing electronic recordation of the hearing, the requestor shall be notified in writing of the cause of its absence.

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

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

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

10.5.a. For recordings of hearings twenty dollars (\$20.00) per disc plus postage.

10.5.b. For photocopies the cost shall be twenty-five cents (\$0.25) plus postage with a minimum fee of twenty dollars (\$20.00).

§92-1-11. Reconsideration.

11.1. An aggrieved inmate may request reconsideration by the Parole Board within 120 days of the date of the Decision. Any request for reconsideration made after the 120 days filing period will be rejected absent a showing of good cause. In examining the request for reconsideration, the Parole Board will only consider those events which have occurred after the decision date or new information that was not available to the Panel at the time of the Decision.. The Parole Board will not re-examine any facts or circumstances available to the Board at the time of the Decision.

11.2. A Panel, as set forth in Section 3.2, may within its discretion, grant or deny a request for reconsideration. In addition to simply granting or denying the request, the Board may modify the upcoming interview date, conduct further hearings concerning the assertions in the request for reconsideration, or request updated information from the Division or staff. The Parole Board shall rule upon the request within a reasonable time.

§92-1-12. Judicial Review.

12.1. Judicial Review. Decisions of the Parole Board are full and final and are not subject to direct appeal.

12.2. Extraordinary Remedies. An aggrieved inmate may institute a state *habeas corpus ad subjiciendum* action (W.Va. Code 53-4A-1 *et seq.*) in the Circuit Court of Kanawha County, the Circuit Court of the County where the Institution is located, or the West Virginia Supreme Court of Appeals, if the actions or Decision of the Parole Board is alleged to violate rights provided by the West Virginia Constitution. An aggrieved inmate may institute an action in the proper federal court (28 U.S. Code § 2241) if the actions or Decision of the Parole Board is alleged to violate a United States Constitutional right.

§92-1-13. Severability.

13.1. 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.

13.2. No error in either the admission or the exclusion of evidence; no error or defect in any ruling or order; or in any act or omission by the Parole Board, Panel, or by any of the parties; shall be grounds for granting a new hearing, for vacating, modifying, or for otherwise disturbing a decision or order, unless refusal to take such action is inconsistent with the fair administration of justice. Any error, defect, irregularity, or variance, which does not affect substantial rights, may be disregarded.

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