

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

Form #5

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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 INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

29A-1-3(b)

AMENDMENT TO AN EXISTING RULE: YES NO

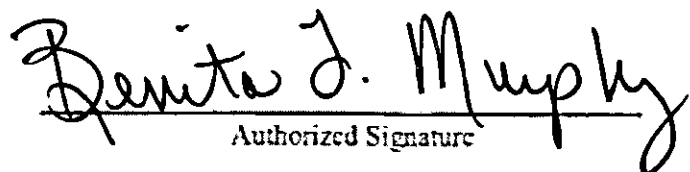
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Procedural Rules of the West Virginia Parole Board - Sanction, Rescission,
and Revocation

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS October 7, 2014


Authorized Signature

FILED

TITLE 92
PROCEDURAL RULE
WEST VIRGINIA PAROLE BOARD

2014 AUG -7 P 12:14

SERIES 2
PROCEDURAL RULES OF THE WEST VIRGINIA PAROLE BOARD -
SANCTION, RESCISSION AND REVOCATION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 92-2-1. General.

1.1. Scope. -- These rules and regulations establish procedures and criteria to be employed by the Parole Board when sanctioning parolees; revoking the parole of those inmates who violate the conditions of parole; requesting reconsideration of decisions of the Parole Board and in discharging the sentence of those who successfully completed the conditions of parole.

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.

§92-2-2. Definitions.

2.1. The word "Chairperson" as used herein shall mean the Parole Board Member appointed by the Governor to govern the West Virginia State Parole Board, pursuant to W. Va. Code §62-12-12.

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

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

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

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

2.6. "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.

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

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

2.9. The word "Institution" shall refer to the following: the Mount Olive Correctional Complex, the Huttonsville Correctional Center, the Pruntytown Correctional Center, the Denmark Correctional Center, the Ohio Correctional Center, the Lakin Correctional Facility for Women, the McDowell County Correctional Center, the Stevens Correctional Center, the Martinsburg Correctional Center, the Northern Regional Jail and Correctional Facility, the Beckley 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.

2.10. "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.

2.11. "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.

2.12. "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.

2.13. "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.

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

2.15. "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.

§92-2-3. Board Decisions.

3.1. Parole Board Standards.

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 offenders 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 for supervision and treatment 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 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 Attendance Requirements.

3.3.a. The presence of an inmate/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.

§92-2-4. Rescission of Parole.

4.1. Grounds for Rescission. The Board may rescind and issue a Notice of Temporary Rescission of any grant of parole, including grant deferred, made pursuant to these rules:

4.1.a. 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;

4.1.b. If any information becomes available to the Board which contravenes the evidence the Panel used to reach the parole decision;

4.1.c. If an inmate paroling to a foreign detainer for service of a sentence has the detainer or sentence voided; or

4.1.d. If an inmate granted Contingent Parole fails to meet the conditions for his or her release on parole in the time specified by the Panel; whereupon the Parole Board shall immediately issue a notice of temporary rescission.

4.2. Procedures for Rescission.

4.2.a. Upon receipt of a written report from the Division of Corrections or any other credible source, that any of the aforementioned grounds for rescission exist, 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.

4.2.b. Within 45 days of issuance of the written hold, a Panel of the Board shall hold a rescission hearing at the institution, or other convenient location, for the purpose of determining:

4.2.b.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

4.2.b.2. Whether the new information, which contravenes the evidence, used to reach the parole decision, is accurate, and if so, whether rescission is warranted; or

4.2.b.3. If an inmate paroling to a foreign detainer for service of a sentence has the detainer or sentence voided; or

4.2.b.4. Whether an inmate granted Contingent Parole fails to meet the conditions for his or her release on parole in the time specified by the Panel.

4.2.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.

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

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

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

§92-2-5. Parole Sanctions.

5.1. The Division shall notify the Parole Board when a parolee begins serving a term of confinement for a parole sanction pursuant to W.Va. Code § 62-12-19. The Parole Board may deny further confinement, or reduce the required period of confinement.

5.2. Upon written request submitted by the parolee within 10 days from arrest, the parolee shall be afforded the right to a hearing within forty-five (45) days from arrest before a Parole Board panel. The sole issue to be decided by the Panel shall be whether further confinement, or a reduced period of confinement, is appropriate. In no event shall the total confinement in response to sanctions exceed one hundred (100) days.

5.3.. In any instance where a Parole Board or Panel decision is required under this section, the Division shall provide to the Parole Board information regarding the parolee's performance on supervision, and risk of reoffending, as determined by a validated risk-needs assessment.

5.4.. The Panel decision shall consider the parolee's performance, adjustments during supervision, the length of successful supervision, adherence to the conditions of parole, the assessed risk of reoffending, as well as any other applicable information available to the Panel.

5.5. If a parolee is confined for a violation, and ultimately has his or her parole revoked pursuant to section six of this Rule, good time shall be applied retroactively to all time in which the parolee was confined.

§92-2-6. Revocation of Parole.

6.1. The Board by a Panel may revoke the parole of any parolee who has previously been granted parole and who has not been discharged from supervision. However, parole shall not be revoked unless a Panel of the Board specifically finds that reasonable cause exists that a parolee has violated a condition of parole which has been imposed either by law, the Board or the Division.

6.2. The Panel shall make a finding that the accused parolee has violated a condition only after it has conducted a prompt and summary hearing, which shall be known as a revocation hearing.

6.3. In addition to determining whether or not the accused parolee has violated condition(s) of parole, the Panel will also consider prior violations, the severity of prior violations, graduated sanctioning responses by the Division, the offender's risk of reoffending, the length of successful supervision, offender adjustment and levels of response to supervision.

6.4 A court order finding a parolee guilty of any offense that occurred while he or she was on parole status is reliable evidence to support a revocation based on a new conviction. A mitigation hearing will be held upon the parolee's request.

6.4.b When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, sexual offense against a minor, incest or offenses with the same essential elements if known by other terms in other jurisdictions, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

§92-1-7. Prerequisites to Revocation Hearing.

7.1. Report of Charge.

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

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

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

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

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

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

7.1.a.6. A written summary of the accused parolee's history of violations, risk assessment, graduated sanction attempts, length of successful supervision, the parolee's adjustment and the appropriate level of response.

7.1.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:

7.1.b.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.

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

7.1.b.2.A. 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.

7.1.b.2.B. A written attestation by the hearing examiner as to the accuracy of such hearing summary.

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

7.1.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:

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

7.1.d. The appropriate aforementioned documentation shall be received no later than the 45th 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 45 day period shall be tolled by:

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

7.1.d.2. The pendency of any criminal charge, which is also the basis of any charge of a violation of parole conditions. This subsection shall not be applied to toll the running of the 45 day period for any other charge;

7.1.d.3. The absence of the parolee from the boundaries of this State for whatever reason; or

7.1.d.4. The escape or absconding of the parolee from the custody of a jail or the supervision of the Division. The Division of Corrections shall provide a written statement to the Board or its Panel explaining the facts and circumstances of any of the four aforementioned causes for cessation of the running of the 45 day period.

7.2. Scheduling of Revocation Hearing.

7.2.a. Upon receipt of the aforementioned requisite documentation, a Panel shall schedule a time, date and designate a location for the hearing.

7.2.a.1. The revocation hearing shall be held no later than the 30th day excluding weekends and holidays following the date upon which either:

7.2.a.1.A. The preliminary hearing is held in this State, or;

7.2.a.1.B. The parolee is returned to the custody of the Division of Corrections through Interstate Compact, or;

7.2.a.1.C. Written waiver of the preliminary hearing is executed.

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

7.2.d. The Division's staff shall notify the Parole Board of the status of the underlying criminal case periodically, but no greater than every thirty (30) days, for all pending revocation hearings continued under this subsection.

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

7.3. Notice of Revocation Hearing. Whenever a final revocation hearing has been scheduled, the Panel shall issue a written notice. The notice shall set forth:

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

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

7.3.c. The accused parolee's right to be represented at the hearing by an attorney; right to have an attorney appointed by the Circuit Court; right to testify or to stand silent; right to have voluntary witnesses appear to testify on his behalf; right to present evidence in defense; and the right to confront or cross-examine witnesses, unless the Panel finds good cause shown for not disallowing direct confrontation.

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

7.3.e. Notice of a revocation proceeding shall also be provided to any individual entitled to notice as a Victim.

7.3.f. Upon receiving notice of an upcoming revocation hearing, the accused parolee or his or her attorney shall advise the Parole Board if the charges will be contested, or if a guilty plea will be entered with mitigation. This will assist the Board in scheduling of upcoming hearings.

§92-2-8. Representation by Counsel.

8.1. At the final revocation hearing the accused parolee may be represented by counsel.

8.2. If the accused parolee is indigent, he or she has the right to apply to have an attorney appointed to them by the Circuit Court, as provided for W. Va. Code §62-12-22.

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

§92-2-9. Procedure at Revocation.

9.1. Panel Decision. All revocation hearings shall be heard by a Panel, as set forth in Section 3.2. At least two Members of the Panel shall be present in order for the Panel to hear and rule upon any manner. No accused parolee may have his or her parole revoked without the vote of at least two Members. In the event that a hearing is conducted by two Members and the two Members are unable to agree upon a ruling, the electronic recording and record of the proceedings shall be reviewed by the third Member of the Panel. At a later time, the third Member shall cast the deciding vote after a review of the electronic recording and records. The Panel may also entertain dispositive motions based upon the documentation and/or evidence presented. If the Panel sustains a motion to dismiss, the proceeding shall be at an end, and the Panel shall issue an order reflecting the motion and the ruling.

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

9.3. Attendance of Witnesses. Both the parole officer and the accused parolee shall be permitted to have witnesses. Witnesses may be excluded from the hearing except for giving testimony in compliance with Section 9.8 of these Rules. Any civilian or public attendees to any form of Parole Board hearing shall only be permitted to bring with them a photo identification.

9.4. Continuances.

9.4.a. Continuances may be granted by the Panel or the Board for good cause. The hearing may be continued past the 30th day, excluding weekends and holidays, upon which either the preliminary hearing is held in this State, the parolee is returned to the custody of the Division of Corrections within this State, or a written waiver of the preliminary hearing is executed.

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

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

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

9.5. Record of Hearing. Final parole revocation hearings shall be recorded electronically or by other reliable means.

9.6. Commencement of Hearing.

9.6.a. At the commencement of the hearing, the Lead Interviewer of the Panel shall identify for the record, the name of the parolee, the date, time and place of the hearing, and the names of those present in the room.

9.6.b. The Lead Interviewer of the Panel shall read aloud the charges to be considered at the hearing and the conditions, which the parolee is charged with violating unless waived by the accused parolee or counsel.

9.7. Plea.

9.7.a. After reading each charge, the Lead Interviewer of the Panel shall ask the parolee to plead either guilty or not guilty in his own words. If the parolee refuses to respond, the Lead Interviewer shall note such refusal for the record. A refusal to plead shall be entered as a plea of not guilty.

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

9.7.c. If the parolee pleads not guilty, the parole officer shall be required to present evidence tending to support the charge, following which the accused 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 9.10. Both the parole officer and the parolee shall be permitted to present evidence to rebut that of the other.

9.8. Witnesses and Testimony.

9.8.a. All witnesses, other than the parole officer as well as the accused parolee, shall be sequestered from the hearing room except when called upon to testify.

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

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

9.8.d. The Lead Interviewer may find that there is a justifiable fear of harm to any witness if he or she were to directly testify, or if his or her identity were to be disclosed. The risk of harm must be demonstrated by an overt threat to the witness, by implicit threats, or by any circumstances which would reasonably lead to a belief that harm would be likely to result. That witness' testimony shall be made *in camera* without the presence of the accused parolee during that witness' testimony.

9.8.e. The parole officer may examine all witnesses who testify and may cross-examine those presented by the accused parolee. The Lead Interviewer may ask questions of any witness at any time.

9.9. Rules of Evidence for Revocation Hearing.

9.9.a. The Rules of Evidence do not apply to revocation proceedings. Any decision to admit or exclude evidence shall be at the discretion of the Lead Interviewer. In any event the presiding Member shall resolve concerning the admissibility of evidence in accordance with these rules:

9.9.b. Evidence may be excluded if it is:

9.9.b.1. Irrelevant;

9.9.b.2. Cumulative, redundant or repetitious; or

9.9.b.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 accused parolee is guilty of the charges.

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

9.9.c.1. It is both reliable and trustworthy in its source and is credible.

9.9.c.2. It is evidence of a statement made by a person who has explicitly refused to attend the revocation hearing to testify.

9.9.c.3. It is evidence of a confession or an admission made by the accused parolee.

9.9.c.4. It is evidence of a recorded memorandum of a witness's 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.

9.9.c.5. It is hearsay evidence offered by the parole officer, or other competent witnesses, of the statement of a confidential informant. Such hearsay evidence shall not be admitted unless the Lead Interviewer is satisfied that there is a justifiable fear of harm to the informant if he or she were to directly testify, or if his or her identity were to be disclosed, and there are indications that such evidence is reliable and trustworthy.

9.9.c.6. Such hearsay evidence that would otherwise be admitted under the West Virginia Rules of Evidence.

9.9.c.7. The Lead Interviewer 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 9.8 are present.

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

9.9.d.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.

9.9.d.2. The document was prepared by and within the scope of duty of a public employee, excepting a parole officer, and was prepared at or near the time of the act, condition, or event, and the source of information and method and time of preparation was such as to indicate its trustworthiness.

9.9.d.3. The document is a report from the Department of Public Safety or from a laboratory under contract with the a Division of the Department of Military Affairs and Public Safety relating to scientific testing for identification of alcohol or controlled substance or firearm or other forensic testing.

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

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

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

9.9.h. The Lead Interviewer may strike or limit any questioning of witnesses which is abusive or clearly intended to harass, intimidate or insult a witness.

9.9.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 Lead Interviewer shall admit evidence of the current status of the criminal proceeding.

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

§92-2-11. Waiver of Revocation Hearing.

11.1. 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.

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

11.2.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.

11.2.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 individuals, one of whom may be the parole officer.

11.3. 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 in writing.

§92-2-12. Decision by the Panel.

12.1. The Panel may decide the case by:

12.1.a. Finding the accused parolee not guilty of the charges and reinstating the parole; or

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

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

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

12.1.e. Finding the parolee not guilty of the charges or guilty of one or more of the charges and discharge them from supervision; *Provided*, that all other requirements have been met for the parolee to be eligible for discharge.

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

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

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

12.3. If the Panel decides not to revoke parole, it shall send a notice to the parolee, his attorney, the parole officer and the supervisor of parole services, advising of the decision.

12.4. Any person receiving notice of a revocation proceeding pursuant to Section 7.3 shall be given notice of the Panel's decision.

§92-2-13. Order of Revocation.

13.1. If the Panel decides to revoke the parole, it will issue a formal Order of Revocation advising of the Decision. Copies of this Order shall be forwarded to the Division of Corrections, the Records Clerk at the parent institution, the administrator of the facility holding the parolee, the parolee's attorney, and the parole officer. It shall be the responsibility of the Division to supply the parolee with a copy of the Order of Revocation of Parole.

13.2. The formal Order of Revocation issued by the Panel shall state:

13.2.a. The parolee's name and DOC number.

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

13.2.c. The date the parolee was granted parole.

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

13.2.e. Aggravating and mitigating circumstances, if any, considered in the decision.

13.2.f. The new parole eligibility date.

13.3. The Panel shall also issue a document for the Division, which shall state:

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

13.3.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.

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

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

§92-2-14. Request for Records.

14.1. 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; and 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 West Virginia Parole Board.

14.2. 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.

14.3. 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.

14.4. 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.

14.5. 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:

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

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

§92-2-15. Reconsideration.

15.1. 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.

15.2. The Parole Board, 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 determine the motion within a reasonable time. Changing a sentence by the granting of parole shall constitute a permissible action under this Rule.

§92-2-16. Judicial Review.

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

16.2. 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.

§92-2-17. Severability.

17.1. 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.

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

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