



**WEST VIRGINIA
SECRETARY OF STATE**

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eFILED

12/20/2016 11:27:34 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 4 -- NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY **Crime Delinquency And Correction**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **149-**

RULE NAME **William R. Laird IV - Second Chance Driver's License Program** **09**

CITE AUTHORITY **17B-7-10**

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Charles A Sadler -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 149-09



Rule Id: 10249



Document: 33168

**TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION**

**SERIES 9
WILLIAM R. LAIRD IV
SECOND CHANCE DRIVER'S LICENSE PROGRAM**

§149-9-1. General.

1.1. Scope. – This legislative rule establishes the standards for the Second Chance Driver's License Program or SCDL. In furtherance, this rule also creates a mechanism or framework for SCDL Program execution; and, coordination among the Division of Justice and Community Services (DJCS); Division of Motor Vehicles (DMV) and the court(s). The purpose of this coordination is to allow an individual who has had their driver's license suspended or revoked as a result of unpaid court costs, and meets the requirements set forth in statute and this rule, to be accepted for participation in the SCDL and to receive a temporary stay of the suspension or revocation from the Commissioner of DMV while the unpaid court costs are being paid.

1.2. Authority. – W. Va. Code §17B-7-10.

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Sunset Provision: This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§149-9-2. Definitions.

2.1. "Applicant" means a person who has submitted an application to the director to participate in the SCDL and is being reviewed to determine eligibility to do so and the requirements for his or her participation in the SCDL are being determined.

2.2. "Commissioner" means the Commissioner of the Division of Motor Vehicles, or his or her designee.

2.3. "Consolidated repayment schedule" or "payment schedule" means the schedule by which a participant is expected to make monthly payments for unpaid court costs consistent with the requirements of the program as established by the director.

2.4. "Court" means a municipal court, magistrate court, circuit court, family court or drug court in the State of West Virginia and the Supreme Court of Appeals of West Virginia.

2.5. “Director” means Director of the Division of Justice and Community Services (DJCS), or his or her designee.

2.6. “Executive Board” refers to the Director of the Division of Justice and Community Services; the Commissioner of the Division of Motor Vehicles, the Administrative Director of the Supreme Court of West Virginia and a representative of the municipal courts as designated by the Executive Director of the West Virginia Municipal League, which shall meet at least once annually, within 14 calendar days following the adjournment of each Regular Session of the West Virginia Legislature. The purpose of this meeting will be to discuss program administration, program progress and effectiveness and other SCDL Program business matters that may be acted upon by the members of this board.

2.7. “Good standing” means compliance by a participant with the requirements of the program, as set forth in the Code of the State of West Virginia and this rule.

2.8. “Monthly payment” means the amount that a participant is scheduled to remit to the Director each month pursuant to the consolidated repayment schedule.

2.9. “Participant” means a person who applies for, and is accepted into, the Second Chance Driver’s License program by the director.

2.10. “Program Guidelines” refers to the document which may be created and executed by the Director and/or the Executive Board which details and/or expands upon the administrative and programmatic requirements of the SCDL Program. As executed, these guidelines will be posted to the website of the DJCS.

2.11. “Second Chance Driver’s License Program” or “Program” or “SCDL” means the program created as a result of the passage of Senate Bill 634 during the 2016 legislative session, that establishes a payment structure for a participant to consolidate unpaid court costs into monthly payments over a defined period of time, coordinates the acceptance and distribution of monthly payments from a participant and certifies that a participant in good standing is eligible for a temporary stay of a driver’s license suspension or revocation due to certain unpaid court costs.

2.12. “Unpaid court costs” means any fee, fine, expense, cost or other moneys that are required to be paid by a person to a court, pursuant to one or more valid court orders, and have not been paid in full.

§149-9-3. Eligibility.

3.1. The purpose of this section is to establish the minimum eligibility requirements for participation in the SCDL.

3.2. Eligibility Requirements. – To be eligible to participate in the SCDL a person must:

3.2.a. Have had his or her driver’s license suspended or revoked for failure to remit

unpaid court costs pursuant to §17B-3-3a or §17B-3-3c of the Code of West Virginia;

3.2.b. Be at least twelve (12) months delinquent in the payment of unpaid court costs to a court(s);

3.2.c. Not have had any unpaid court costs incurred from charges that involve driving a commercial motor vehicle or which otherwise violate the commercial drivers' license requirements in §17E of the Code of West Virginia.

3.2.d. Not currently have his or her driver's license suspended, revoked or cancelled for any other drivers license suspensions, revocations or cancellations in West Virginia, or other states, territories or jurisdictions.

3.2.e. Successfully pass a vision test, the driver license knowledge test and the road skills test, if the applicant's driver's license is expired or has been surrendered longer than six (6) months.

3.2.f. Meet other eligibility requirements established by these rules or the Program Guidelines executed and posted by the director.

§149-9-4. The SCDL Program.

4.1. The purpose of this section is to establish general program structures, functions and guidance.

4.2. Application – Any person wishing to participate in the SCDL shall complete a SCDL Program Application. This application may be completed in hard copy form or electronic format, at the discretion of the director. The application will contain completion instructions. The application shall contain a participant section to be completed by the individual requesting to participate in the SCDL.

4.2.a. Application – Applicant Section. This section of the application shall contain the following participant information:

4.2.a.1. Name (Last Name, Middle Initial, First Name, Maiden name as applicable);

4.2.a.2. Residence address, city, state and ZIP code;

4.2.a.3. Mailing address (if different from residence address);

4.2.a.4. Email address;

4.2.a.5. West Virginia Driver's License number (DLN);

4.2.a.5. Birthdate;

4.2.a.6. Gender;

4.2.a.7. Daytime phone;

4.2.a.8. Mobile phone;

4.2.a.9. Social security number (SSN);

4.2.a.10. Amount of unpaid court costs due, as known by the applicant (with the director, for this item, being able to request copies of documents for verification as needed);

4.2.a.11. Applicant's signature affirming that the information provided in the section is true and accurate and consenting to the exchange of the personally identifiable information (PII) on the application between the DJCS, DMV and the court(s); with an acknowledgement that the provision of false or misleading information on the application may cause the participant to be denied participation in, or removal from, the SCDL and, the date of signature/submittal.

4.3. Upon receipt of a SCDL application the director shall take the following steps:

4.3.a. Verify that the application is completely filled out. When determined not to be to secure applicable information required from the participant. Failure to provide such requested information may be grounds to deny the applicant participation in the SCDL.

4.3.b. Forward the completed and signed application to the commissioner. Upon receipt, the commissioner will review the application to determine if the applicant meets the eligibility requirements of the SCDL program as set forth in 3.2 of this rule.

4.3.b.1. If the applicant is determined to be eligible the commissioner will communicate to the director the following information:

4.3.b.1.A. That the applicant is eligible.

4.3.b.1.B. Whether the applicant is required to take a driver's license vision, knowledge test and road skills test.

4.3.b.1.C. The names of court(s) and citation numbers where court costs and fines are due. If the applicant must complete the license tests this information will be provided after the successful completion of such tests.

4.3.b.2. If the applicant is ineligible, the commissioner will send an explanation of ineligibility and any additional actions required by the applicant to the director.

4.3.c. Upon receipt of the eligibility or ineligibility notice, the director will

communicate to the applicant the determination.

4.3.c.1. For those individuals determined to be eligible information will be sent advising whether they must take the applicable tests to bring their license current due to it having been expired or surrendered for more than six (6) months and if so that a \$50 payment must first be made to the SCDL. If no license tests are required information will be sent to them concerning their requirement to make the first \$50 payment towards their unpaid court costs while their payment schedule is being finalized. The \$50 payment, whether the license tests are required or not, must first be received for the applicant to continue forward in the SCDL.

4.3.c.1.A. If an applicant must complete the related license tests upon receipt of the required \$50 payment the director will provide the commissioner with a Certificate of Compliance.

4.3.c.1.B. Upon the receipt of the Certificate of Compliance the commissioner shall issue a "Second Chance Driver's License" letter and send it to the director with a driver's license brochure. The director will forward that letter and brochure to the applicant.

4.3.c.1.C. The applicant must take the "Second Chance Driver's License" letter to the DMV, or one of its regional offices to apply for a driver's license and take the required tests for such a license.

4.3.c.1.D. Once the applicant passes the vision, knowledge and road skills tests the commissioner will stay the revocations and suspensions of the unpaid citations that are covered by the SCDL. Once that stay is effect the participant may drive his or her motor vehicle, subject to restrictions upon where and when the participant may operate a motor vehicle during the stay as determined by the commissioner, for the period of time that they remain in good standing within the SCDL.

4.3.c.1.E. The commissioner will notify the director when an applicant has successfully completed the vision, knowledge and road skills tests.

4.3.c.2. For those individuals determined to not be eligible.

4.3.c.2.A. The applicant will be provided information as to why he or she was not eligible and the commissioner's requirements to be taken to bring themselves to where they may become eligible for the SCDL.

4.3.c.2.B. Upon full resolution of the commissioner's requirements, the applicant may reapply for the SCDL.

4.4. A SCDL eligible applicant who has made at least a \$50 payment to the director, and who has passed their driver's license tests, if applicable, or who was not required to complete the driver's license testing and has made their initial required \$50 fee, is considered to be a participant in the SCDL. Once so considered the participant is not

required to make payment to the court(s) for the unpaid costs covered by the SCDL, unless the director notifies the participant that he or she has been removed from the SCDL and that the obligation of the applicant to pay the court(s) is reinstated.

4.5. The director will verify with the court(s) the total of all unpaid court costs owed by eligible applicants pertaining to the suspension or revocation actions taken previously by DMV as a result of notice from the court(s). The court(s) will provide the director with the specific amount of all unpaid court costs, fines, forfeitures or penalties owed and still due by the participant.

4.6. If a notice has been made by the court(s) previously to the tax department to collect the unpaid court costs from state tax refunds once the court(s) receive notice from the director that the individual is now a participant in the SCDL the tax department will be notified by the court(s) to take no further amount from the participant's refunds while the participant is in good standing in the SCDL.

§149-9-5. Payments, Compliance and Non-compliance.

5.1. The purpose of this section is to establish the payment, compliance, and non-compliance process of SCDL participation.

5.2. The director and/or the executive board shall develop a fair, standard formula to be applied to each applicant that is based on the information submitted and the unpaid court costs determined. That formula shall be published in the guidelines. The purpose of this formula will be for determining a consolidated monthly repayment schedule and generate a monthly payment amount. At the discretion of the Director and within reason, this formula may be modified, in whole or in part, on a case-by-case basis to address mitigating circumstance which could influence a participant's ability to make monthly payments. This formula shall:

5.2.a. Demonstrate at least, a minimum monthly payment of \$50; and,

5.2.b. Create a schedule which will allow for the participant to completely repay all unpaid costs due within twelve (12) months or less beginning on the date of notification, and,

5.2.c. May, upon a determination of financial hardship by the director or his or designee based on a review of financial obligations and earnings by the applicant, have a payment schedule that may be extended to no more than twenty-four (24) months.

5.3. If hardship circumstances are claimed by the participant the director may require from the participant detailed financial information of a sufficient nature and scope to properly allow a review to be completed for determination of the extension of payment schedule and a modification of the amount due for each required payment. Only in the case of the last payment to be made may the amount to be paid be less than \$50.

5.4. The participant will be provided a copy of the payment schedule with an indication of the amount to be paid, dates to be paid and the place where payment is to be made.

5.5. SCDL payments will be paid to the director by cashier's check, money order or as otherwise set within the Program Guidelines upon notice by the director or as part of the payment schedule established.

5.6. If the participant becomes more than thirty (30) calendar days late in making a SCDL payment the director shall send a Notice of Non-compliance to the commissioner, with a copy to the participant. Upon the receipt, the commissioner will cancel the stay and reinstate the suspensions or revocations of the participant's license.

5.7. If the participant becomes compliant with the payment schedule, the director shall send a Certificate of Compliance to the commissioner. Upon receipt, the commissioner will stay the suspensions or revocations of the SCDL-covered unpaid citations.

5.8. If the participant becomes more than thirty (30) days late in making SCDL payments on three (3) occasions the director will remove him or her from the SCDL. The director will send a Program Removal Notice to the commissioner and the court(s). Upon receipt, the commissioner will lift the stays and suspend or revoke the participant's driver's license for each SCDL covered unpaid citation and the court(s) will move to secure payment of the remaining unpaid court costs.

5.9. If the participant is convicted of any subsequent criminal offense after acceptance into the SCDL the director shall remove him or her from the program and provide a Program Removal Notice to the commissioner, the court(s) and the participant. Upon receipt, the commissioner will suspend or revoke the participant's driver's license and the court(s) will move to secure payment of the remaining unpaid court costs.

5.10. Not have any new driver's license suspensions, revocations or cancellations after acceptance in the SCDL.

5.11. When a participant fully completes his or her payment schedule, the director shall send a Program Completion Certificate to the court(s), with a copy to the commissioner and the participant.

5.12. Following receipt of the Program Completion Certificate, the court(s) will enter a Verification of Satisfaction for each citation and send such verification to the commissioner. The commissioner will then close each applicable citation file for the SCDL participant.

5.13. The director will distribute the payments, minus the five percent (5%) administrative process fee due to DJCS, collected from the participant to the court(s) for which the citations had resulted in the participant's suspensions or revocations and eligibility for the SCDL. Similar distribution will be made at the time that any Program Removal Notice is issued to a SCDL participant.

5.14. As to the five percent (5%) administrative process fee it may only be collected from the remaining collected amounts paid to the SCDL Program after the Director has separated out those monies from the payments that constitute the payment of a fine, forfeiture or penalty which are to be paid in full to the Court which imposed it.

5.15. A participant who completes his or her payment schedule is considered to have fully paid all of the court costs related to the SCDL-covered citations and no other costs are due to the courts by that participant or license reactivation fees for those SCDL-covered citations.

5.16. A participant who receives a Program Removal Notice who has unpaid court costs that are at least twelve (12) months old, which have resulted in suspensions or revocations, and which were not considered in the applicant's prior SCDL payment plan, may reapply for the SCDL. The director may approve the new SCDL application for further consideration at his or her discretion following a review of the current application, suspensions or revocations and the applicant's performance as to his or her prior SCDL payment schedule.

5.17. The director will notify the applicant in writing as to the status of the review of the new application.

5.17.a. If denied, the director will notify the applicant of the reasons for the denial.

5.17.b. If approved, the director will notify the applicant and forward the application to the commissioner for consideration as a new applicant.

§149-9-6. Data Use and Retention.

6.1. The use and retention of information provided or obtained by the director as part of the SCDL and participation procedures will follow Privacy and Security laws and the Privacy and Security Guidelines as set by the West Virginia Privacy Management Team as authorized by Executive Order of the Governor.

§149-9-7. Appeal of SCDL Program Decisions or Actions.

7.1. If an applicant is denied SCDL participation or a participant is removed from the SCDL he or she may appeal the decision or action within thirty (30) days and in accordance with the provisions of section four, article five, chapter twenty-nine-a of the West Virginia Code of 1931, as amended.