

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1989 JUL 26 PM 2:34

JOHN D. ROY, JR.
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Corrections TITLE NUMBER: 90

CITE AUTHORITY: WV Code § 62-13-2

EMERGENCY 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 FILED AS AN EMERGENCY: 2

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and regulations
governing parole supervision.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

With regard to the supervision of parolees, the Commissioner of the Department of Corrections succeeded to the powers of the Board of Probation and Parole (Code § 62-13-2; 62-13-7). Like all other Department of Corrections rules, Series 2 has been previously filed with the Secretary of State but, in reliance on Code § 29A-1-3(c), not with the Legislature. The importance of the continuing validity of such regulations mandates this emergency filing because these rules sometimes determine the revocation of parole.

Use Additional Sheets If Necessary.

T. L. / 11/25

SUMMARY OF PROPOSED 90 CSR 2

These regulations set forth the uniform rules of conduct for all parolees supervised by Department of Corrections parole officers.

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TITLE 90
LEGISLATIVE RULES
DEPARTMENT OF CORRECTIONS
SERIES 2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RULES AND REGULATIONS GOVERNING PAROLE SUPERVISION

§ 90-2-1. General.

- 1.1. Scope. - The legislative rule establishes rules and regulations governing the conduct of inmates released on parole and of parolees whose supervision has been undertaken by this State by reason of any interstate compact.
- 1.2. Authority. - W. Va. Code § 62-13-2.
- 1.3. Filing Date. - July 26, 1988.
- 1.4. Effective Date. - July 26, 1988.

§ 90-2-2. Rules and Regulations.

- 2.1. All parolees supervised by the parole authorities of the West Virginia Department of Corrections shall be required to execute a statement that he or she understands the following conditions and agrees to abide by them:
 - a. When released, you must proceed directly to the place to which you have been paroled and report to your parole officer within 24 hours unless otherwise instructed.
 - b. You are to have written permission of your parole officer before you leave the prescribed area of supervision to which you are paroled.
 - c. You are to notify your parole officer of any change of residence or employment within 72 hours.
 - d. You are required to have suitable employment, remain gainfully employed, and support any dependents to the best of your ability.
 - e. You are required to maintain behavior that does not threaten the safety of yourself or others or that could result in imprisonment.

- f. You must not own, carry or possess firearms or unlawful weapons of any kind.
- g. You must report within 72 hours to your parole officer each time you are arrested or questioned by officers of any law enforcement agency.
- h. Between the first and tenth of each month you must make a complete and truthful written report to your parole officer of your previous month's activities on forms provided and report in person as directed by your parole officer.
- i. You are not to possess, use, or have in your possession any illegal drugs, or paraphernalia.
- j. You shall not violate any municipal ordinances or laws of this state, any other state, or the United States.
- k. You will abide by any special written requirements imposed upon you by your parole officer.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

September 6, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

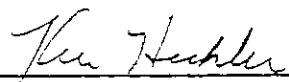
AGENCY: Department of Corrections

RULE: New Series 2 & 3; Parole Supervision and Furlough Programs

DATE FILED AS AN EMERGENCY RULE: July 26, 1988

DECISION NO. 17-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept 6, 1988
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION (ERD 17-88)

AGENCY: Department of Corrections
RULE: New Series 2 & 3; Parole Supervision and
Furlough Programs
DATE FILED AS AN EMERGENCY RULE: July 26, 1988

- par. 1 The Department has filed the above new series rules as an emergency.
- par. 2 Due to their similarity, both series 2 and 3 will be treated within this ERD 17-88.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 7 The Department has filed these emergency rules with supporting documents with the Secretary of State on July 26, 1988 and with the LRMRC on July 28, 1988.

par. 8 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 9 (B) Statutory Authority -- WV Code §62-13-2 reads in part:

The commissioner shall prescribe rules and regulations for the supervision of probationers and parolees under his supervision and control. . .

par. 10 WV Code §25-1-13 reads:

§25-1-13. Furlough programs.

The commissioner is hereby authorized to establish a furlough program for inmates under his control and custody. Such program may provide that selected inmates be permitted to reside outside an institution operated by the department of corrections under legislative rules promulgated by the commissioner pursuant to chapter twenty-nine-a (§29A-1-1 et seq.) of this code.

par. 11 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 12 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 14 The facts and circumstances as presented by the Department are as follows:

With regard to the supervision of parolees, the Commissioner of the Department of Corrections succeeded to the powers of the Board of Probation and Parole (Code §62-13-2; §62-13-7). Like all other Department of Correction rules, Series 2 has been previously filed with the Secretary of State but, in reliance on Code §29A-1-3(c), not with the Legislature. The importance of the continuing validity of such regulations mandates this emergency filing because these rules sometimes determine the revocation of parole.

§25-1-13 was enacted by the 1988 Legislature to give statutory authority to the Commissioner of the Department of Corrections to establish furlough programs. By its February 22, 1985 order in Nobles v. White, a pending case involving conditions at the Huttonsville Correctional Center, the court granted such authority to the Commissioner. To avoid the possibility of disputes regarding the legality of the program in the absence of rules filed as emergency rules, and in view of the necessity of maintaining the program to help control the prison overcrowding crises, the Department of Corrections believes that such rules should be deemed emergency rules. Although the Department of Corrections believes that the Nobles order provides sufficient independent authority for the continued operation of the program, this filing is intended to eliminate possible legal problems in the future.

- par. 15 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 16 This decision shall be cited as Emergency Rule Decision 17-88 or ERD 17-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department, the Attorney General and the Legislative Rule Making Review Committee.

Ken Hechler

KEN HECHLER

SECRETARY OF STATE
FED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered

THIS DATE

Sept 6, 1988
ADMINISTRATIVE LAW DIVISION