

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Corrections TITLE NUMBER: 90

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §25-1-13

AMENDMENT TO AN EXISTING RULE: YES~~XX~~ NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 3

TITLE OF RULE BEING AMENDED: Furlough Programs For Inmates Under the
Custody and Control of the Commissioner of the Department
of Corrections

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

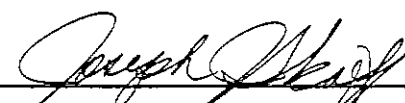
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON July 30, 1994 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS. ...

Rita A. Stuart
Division of Corrections
112 California Avenue
Bldg. 4, Room 300
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: _____

Type of Rule: _____ Legislative _____ Interpretive _____ Procedural

Agency _____

Address _____

*****NO FISCAL IMPACT*****

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

3. Objectives of these rules:

Rule Title: _____

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

Date: _____

Signature of Agency Head or Authorized Representative

TITLE 90
LEGISLATIVE RULE
DEPARTMENT OF CORRECTIONS

SERIES 3
FURLOUGH PROGRAMS FOR INMATES UNDER THE CUSTODY AND CONTROL OF
THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS

BRIEF SUMMARY

The purpose of the amendment proposed for this Legislative Rule is to more carefully delineate the circumstances and guidelines for the temporary release of an inmate from the custody of the West Virginia Division of Corrections. The changes provide for tighter control of furloughs in conformance with the Division's responsibility for the maintenance of public safety.

TITLE 90
LEGISLATIVE RULE
DEPARTMENT OF CORRECTIONS

SERIES 3
FURLOUGH PROGRAMS FOR INMATES UNDER THE CUSTODY AND CONTROL OF
THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS

§90-3-1. General.

- 1.1 Scope - This legislative rule establishes the furlough program for inmates under the custody and control of the West Virginia Department of Corrections.
- 1.2 Authority - W.Va. Code §25-1-13
- 1.3 Filing Date -
- 1.4 Effective Date -

§90-3-2. Definitions.

- 2.1 Furlough - An authorized unescorted absence from actual confinement within an institution for a specific purpose, to a specific place, under specific conditions, and for a specific time.
- 2.2 Unescorted Absence - Inmate is not accompanied by Correctional Officer.

§90-3-3. Applicability.

- 3.1 This regulation is applicable to all Department of Corrections facilities which house adult inmates.

§90-3-4. Eligibility for furlough consideration; frequency and duration of furloughs.

- 4.1 The Commissioner of Corrections shall promulgate rules and regulations governing the furlough policy at each institution under his authority.
- 4.2 The Commissioner of Corrections may grant furloughs as deemed appropriate for medical or psychiatric treatment, substance abuse treatment, to strengthen family relationships or any other reasons he/she deems appropriate.

4.3 The furlough policy promulgated by the Commissioner of Corrections will normally be applicable to inmates whose overall custody classification is I or II, minimum and trustee as determined by the WV Corrections Classification Profile (CCP).

4.4 Furlough for inmates whose custody classification exceed II shall require a written recommendation from the Chief Executive Officer of the requesting Institution and specific approval of the Commissioner of Corrections.

§90-3-5. Restrictions, conditions and criteria.

5.1 An inmate may not be granted a furlough if Prison Officials believe that he/she poses a threat to him/herself or others, may become involved in criminal activity while on furlough, poses a risk to the victim of the crime or crimes for which committed or poses a risk to the community in general.

5.2 Furlough Requests; Contract; Notification of Counties.

5.2.1. The Warden, Superintendent, or Administrator shall establish such requirements necessary for the requesting of a furlough, and shall designate a Furlough Officer to review and handle such requests. Exceptions may be made with the approval of the Commissioner.

5.2.2. Reporting, requirements, rules, regulations, and special conditions shall be in the form of a contract. The contract shall inform the furloughee that his/her conduct will be monitored.

5.2.3. Upon receiving the first valid request for a furlough from an eligible inmate, the Furlough Officer shall notify in writing the Prosecuting Attorney, Sheriff, and Parole Officer in the original sentencing county, as well as the Sheriff and Parole Officer in the county to which furlough is requested, if different, that the inmate may be eligible to receive furlough privileges beginning on a particular date.

§90-3-6. Procedure.

6.1. The Commissioner of Corrections shall develop rules and regulations to ensure that only eligible inmates are considered for furloughs.

6.2. Any violation of terms and conditions of a furlough may result in the immediate cancellation of the furlough.

6.3. Inmates who violate the terms and conditions of a furlough may be disciplined under Division of Corrections Policy 670.00, "Discipline of Adult Inmates".

6.4. Any violations of conditions of a furlough which is a violation of Federal or State law shall be reported to the appropriate law enforcement authority for prosecution under the applicable statute.

6.5. Any inmate who fails to return from a furlough shall be deemed to have escaped and will be charged under the applicable statute.

§90-3-7. Exceptions.

7.1. The Commissioner of Corrections is empowered to grant exceptions to policy with good cause.

7.2. Extended furloughs may be granted upon special request.

7.3. Special time frames may be designated by the Central Office for specific holidays.

7.4. Any special exception that is granted shall not count against the normal duration or frequency criteria applicable to that inmate.

§90-3-8. Notification of Sentencing County (Work Release Inmates)

8.1. Within one week of an inmate's arrival at a Work Release Center, the Administrator shall notify, in writing, the Prosecuting Attorney, Sheriff, and Parole Officer of the sentencing county of the following information:

a. That the inmate has been assigned to a community-based program.

b. That the inmate may be eligible to receive furlough privileges beginning on a particular date.

c. That the inmate's stay at the Center will be for a particular period of time contingent upon parole requirements and conduct.

TITLE 90
LEGISLATIVE RULE
DEPARTMENT OF CORRECTIONS

SERIES 3
FURLOUGH PROGRAMS FOR INMATES UNDER THE CUSTODY AND CONTROL OF
THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS

§90-3-1. General.

- 1.1. Scope - This legislative rule establishes the furlough program for inmates under the custody and control of the West Virginia Department of Corrections.
- 1.2. Authority - W.Va. Code §25-1-13 ~~(1988 Supp.)~~
- 1.3. Filing Date - ~~January 13, 1989~~
- 1.4. Effective Date - ~~January 13, 1989~~

§90-3-2. Definitions.

- 2.1. Furlough - An authorized absence from actual confinement within an institution for a specific purpose, to a specific place, under specific conditions, and for a specific period of time.
- 2.2. ~~Maintenance - Any inmate on special job assignments, e.g. Anthony Center or Pruntytown, cooks, maintenance, cadre, road crews, etc. at a work release center, or any other special, out-of-institution assignment so designated.~~

§90-3-3. Applicability.

- 3.1. This regulation is applicable to all Department of Corrections facilities which house adult inmates.

§90-3-4. Eligibility for furlough consideration; frequency and duration of furloughs.

- 4.1. ~~West Virginia Penitentiary - In order to be eligible for furlough an inmate must have served his minimum sentence, must have had no finding of misconduct within the preceding twelve months, and must be classified as minimum or trusty status with outside clearance. A furlough may not exceed seventy-two (72) hours (including travel time) and may be granted no more than once every six (6) months.~~

- 4.2. ~~Huttonsville Correctional Center - In order to eligible for a furlough, an inmate must have served six (6) months at Huttonsville Correctional Center, must be within two (2) years of his initial parole eligibility date and must have no finding of misconduct during the preceding six (6) months and must have a custody rating of Overall I or Overall II; a furlough may not exceed seventy-two (72) hours (including travel time) and may be granted no more than once every three (3) months.~~
- 4.3. ~~Maintenance - In order to be eligible for a furlough, an inmate must have served six (6) months in Department of Corrections custody, must be within two (2) years of his initial parole eligibility date, must have no finding of misconduct during the preceding six (6) months, and must have been on maintenance status at least ninety (90) days (30 days of which have been at the current place of assignment); the furlough may not exceed fifty two (52) hours (including travel time) and may be granted no more than once every month.~~
- 4.4. ~~Work Release Centers - In order to eligible for a furlough, an inmate must have served at least thirty (30) days in the work release center (on either work release or maintenance status) and have had no finding of misconduct during the preceding six (6) months; the furlough may not exceed fifty two (52) hours and may be granted no more than once every other week.~~

§90-3-5. Restrictions, conditions and criteria.

5.1. An inmate may not be granted a furlough if:

- 5.1.1. ~~The inmate is identified with large scale organized criminal activity.~~
- 5.1.2. ~~The inmate has serious emotional or personality problems.~~
- 5.1.3. ~~The inmate has a pending felony detainer.~~
- 5.1.4. ~~The inmate poses a clear and present danger to the community.~~
- 5.1.5. ~~Community sentiment is sufficiently adverse to endanger the rehabilitative potential of the furlough.~~

~~5.1.6. Prison officials have reasonable suspicion that the inmate intends to become involved in illicit behaviors.~~

~~5.1.7. Prison officials have reasonable cause to believe that the inmate, while on furlough, may cause emotional stress to a member of his own family, the victim or member of the victims family or any witnesses involved in his case.~~

~~5.1.8. The inmate is a serious sex offender.~~

5.2. Furlough Requests; Contract; Notification of Counties.

5.2.1. The Warden, Superintendent, or Administrator shall establish ~~any~~ requirements necessary for the requesting of a furlough, and shall designate a Furlough Officer to review and handle such requests. Exceptions may be made with the approval of the Commissioner.

5.2.2. Reporting requirements, rules, regulations, and special conditions shall be in the form of a contract. The contract shall inform the ~~inmate~~ that ~~his~~ conduct will be monitored ~~while he is on furlough.~~

5.2.3. Upon receiving the first valid request for a furlough from an eligible inmate, the Furlough Officer shall notify in writing the Prosecuting Attorney, Sheriff, and Parole Officer in the original sentencing county, as well as the Sheriff and Parole Officer in the county to which furlough is requested, if different, that the inmate may be eligible to receive furlough privileges beginning on a particular date.

§90-3-6. Procedure.

6.1 ~~Filing Request - The inmate shall file a request for a furlough at least thirty (30) days in advance of the date being requested. A separate, individual filing shall be necessary for each furlough requested. Such requests shall be filed in accordance with the requirements developed pursuant to Section 5.2.1. of the this rule.~~

6.2. ~~Review - The furlough request shall be received and reviewed by the furlough officer. Those requests which meet the criteria shall be forwarded to the Department's~~

~~Central Office at least twenty (20) days prior to the date of the proposed furlough.~~

6.3. ~~Furlough Approval/Disapproval~~ Every effort shall be made to return the furlough request from the Central Office to the Furlough Officer at least ten (10) days prior to the date of the proposed furlough.

6.4. ~~Furlough Contract~~ Upon receipt of approval by the Central Office, the Contract called for in Section 5.2.2 of this rule shall be completed by the Furlough Officer and signed by the inmate; final transportation arrangements shall be made.

6.5. ~~Violation of Contract Conditions of Furlough:~~

6.5.1. ~~If a violation of a condition of any furlough is charged by a monitoring officer which would constitute a crime, the officer shall arrange for the immediate return of the inmate the institution or to the nearest jail.~~

6.5.2. ~~Any violation of a condition of a furlough shall constitute an offense, the penalty for which may be revocation of furlough in addition to any other penalties prescribed by inmate disciplinary regulations for those furlough violations which constitute specific offenses thereunder. Disciplinary hearings on the alleged infraction will be held in accordance with the provisions of inmate disciplinary regulations.~~

6.5.3. ~~Any inmate failing to return to the institution or to a special assignment location on time as required by the agreement or upon order of a monitoring officer, Warden, Superintendent, or Administrator, shall be considered to have committed an evasion from confinement or escape and is subject to arrest and prosecution for escape as well as disciplinary action pursuant to inmate disciplinary regulations.~~

§90-3-7. Exceptions.

7.1. ~~Emergency Furloughs may be granted directly by the Warden, Superintendent, or Administrator, with telephone notification to the Central Office, for purposes of visiting critically ill members of the inmate's immediate family, due to the death of an immediate~~

~~family member, or to attend special appointments for specialized medical care/treatments as deemed necessary by prison medical staff.~~

7.2. Extended furloughs may be granted upon special request.

7.3. Special time frames may be designated by the Central Office for specific holidays.

7.4. ~~The Commissioner or his designee may make special exceptions for good cause.~~

7.5. ~~Any special exception that is granted shall not count against the normal duration or frequency criteria for furloughs applicable to that inmate.~~

S90-3-8. Notification of Sentencing County (Work Release Inmates).

8.1. Within one week of any inmate's arrival at a Work Release Center, the Administrator shall notify, in writing, the Prosecuting Attorney, Sheriff, and Parole Officer of the sentencing county the following information:

~~8.1.1~~ That the inmate has been assigned to a community-based program.

~~8.1.2.~~ That the inmate may be eligible to receive furlough privileges beginning on a particular date.

~~8.1.3.~~ That the inmate's stay at the Center will be for a particular period of time contingent upon parole requirements and conduct.