

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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Aug 5 12 28 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Corrections TITLE NUMBER: 90

CITE AUTHORITY W.Va. Code §25-1-13

AMENDMENT TO AN EXISTING RULE: YES XX NO

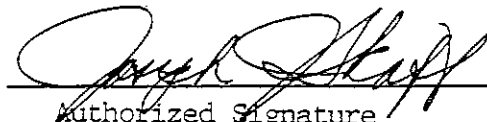
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 3

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:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

Major General Joseph J. Skaff
Secretary, Department of Military
Affairs & Public Safety

5.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Furlough Programs for Inmates Under the Custody and Control of the Commissioner of the Department of Corrections

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Corrections

Address 112 Califronia Avenue, Room 300

Charleston, WV 25305

Phone: 558-2036

1. Effect of Proposed Rule NO FISCAL IMPACT

	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: Furlough Programs for Inmates Under the Custody and Control of the Commissioner of Corrections

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: August 4, 1994

Signature of Agency Head or Authorized Representative



Major General Joseph J. Skaff
Secretary, Department of Public Safety

DATE: August 4, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Corrections

LEGISLATIVE RULE TITLE: Furlough Programs for Inmates Under the Custody and Control of the Commissioner of Corrections

1. Authorizing statute(s) citation W.Va. §25-1-13

2. a. Date filed in State Register with Notice of Hearing

June 15, 1994

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Hearing(s) N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XX

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 5, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

Rita A. Stuart 558-2036

Division of Corrections

112 California Avenue, Room 300

Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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
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SERIES 3
FURLOUGH PROGRAMS FOR INMATES UNDER THE CUSTODY AND CONTROL OF
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SUMMARY OF RULE

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 (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 unescorted 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. 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. ~~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. The Commissioner of Corrections shall promulgate rules and regulations governing the furlough policy at each institution under his authority.~~

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. 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. ~~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. 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. ~~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. 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.~~

S90-3-5. 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.

~~5.1.1 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 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 ~~inmate~~ furloughee that ~~his his/her~~ 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 this rule. The Commissioner of Corrections shall develop rules and regulations to ensure that only eligible inmates are considered for furloughs.~~
- ~~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. Any violation of terms and conditions of a furlough may result in the immediate cancellation of the 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. 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. 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. 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. Violation of Contract Conditions of Furlough: Any inmate who fails to return from a furlough shall be

deemed to have escaped and will be charged under the applicable statute.

~~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 to 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. 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. The Commissioner or his designee may make special exceptions for good cause. Any special exception that~~

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

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

§90-3-8. 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~~ a. That the inmate has been assigned to a community-based program.

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

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