

Form #7

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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SUMMARY OF PROPOSED 90 CSR 3

These regulations establish eligibility criteria, application and approval procedures, notice requirements and violation procedures regarding the inmate furlough program. Furloughs permit selected state inmates to leave a prison facility on his own for a specified period of time for purposes such as looking for work, visiting family, etc.

TITLE 90
LEGISLATIVE RULE
DEPARTMENT OF CORRECTIONS

FILED
1988 JUL 26 PM 2:33
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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. - July 26, 1988.

1.4. Effective Date. - July 26, 1988.

§ 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 time.

2.2. Maintenance. - Any inmate on special job assignments, e.g. Anthony Center of 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. - Inmate must be parole eligible; furlough may not exceed 72 hours (including travel time) and may be granted no more than once every 6 months.

4.2. Huttonsville Correctional Center. - Inmate must have served 6 months at Huttonsville Correctional Center, must be within 2 years of his initial parole eligibility date and must have no finding of misconduct during the preceding 6 months; furlough may not exceed 72 hours (including travel time) and may be granted no more than once every three months.

4.3. Maintenance. - Inmate must have served 6 months in Department of Corrections custody, must be within 2 years of initial parole eligibility date, must have no finding of misconduct during the preceding 6 months, and must have been on maintenance status at least 90 days (30 days of which have been at the current place of assignment); furlough may not exceed 52 hours (including travel time) and may be granted no more than once every month.

4.4. Work Release Centers. - Inmate must have served at least 30 days in the work release center (on either work release or maintenance status) and have had no finding of misconduct during the preceding 6 months; furlough may not exceed 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:

- a. The inmate is identified with large scale organized criminal activity.
- b. The inmate has serious emotional or personality problems.
- c. The inmate has a pending felony detainer.
- d. The inmate poses a clear and present danger to the community.
- e. Community sentiment is sufficiently adverse to endanger the rehabilitative potential of the furlough.

5.2. Furlough Requests; Contract; Notification of Counties.

- a. 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.
- b. Reporting, requirements, rules, regulations, and special conditions shall be in the form of a contract. The contract shall inform the furloughee that his conduct will be monitored.
- c. 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 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 § 5-2(a).

6.2. Review. - The furlough request shall be received by the furlough officer. Those requests which meet the criteria outlined in § 5.1 shall be forwarded to the Department's Central Office at least 20 days prior to the date of the proposed furlough.

6.3. Furlough Approval. - Every effort shall be made to return the furlough request from the Central Office to the Furlough Officer at least 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 § 5.2(b) 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

- a. 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.
- b. 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 Policy Directive 670.00 for those furlough violations which constitute specific offenses thereunder. Disciplinary hearings on the alleged infraction will be held in accordance with the provisions of Policy Directive 670.00, Section 4.
- c. 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 Policy Directive 670.00.

§ 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 family members or due to the death of a family member.

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 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 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.

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(Plus all the volunteer
help we can get)

September 6, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

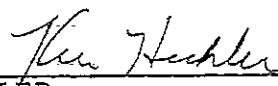
AGENCY: Department of Corrections

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
FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered

THIS DATE

Sept 6, 1988
ADMINISTRATIVE LAW DIVISION