

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1988 SEP 20 PM 2:26
OFFICE OF THE SECRETARY OF STATE

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

AGENCY: Department of Corrections TITLE NUMBER: 90

CITE AUTHORITY W.Va. Code § 25-1-13

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: (3)

TITLE OF RULE BEING PROPOSED: Furlough programs for inmates under
the custody and control of the Commissioner of The Department of
Corrections.

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.

A.V. Dodrill, Jr. by 7/2/88
A.V. Dodrill, Jr.
Commissioner

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-TITLE 90
LEGISLATIVE RULE
DEPARTMENT OF CORRECTIONS

OFFICE OF THE
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 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. - 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. 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 and must have a custody rating of Overall I or Overall II; 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.
- f. Prison officials have reasonable suspicion that the inmate intends to become involved in illicit behaviors.
- g. Prison officials have reasonable cause to believe that the inmate, while on furlough, may cause emotional stress to member of his own family, the victim or member of the victims family or any witnesses involved in his case.
- h. The inmate is a serious sex offender.

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 furlougee 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 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.
- 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.

8 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.

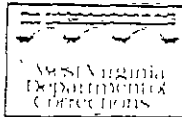
7.4. The Commissioner or his designee may make special exceptions for good cause.

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

8 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.



ARCH A. MOORE, Jr.
Governor

Office of the Commissioner

A.V. DODRILL, Jr.
Commissioner

112 CALIFORNIA AVE.
STATE CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA 25305

Date: September 19, 1988
To: Debra Graham, Associate Counsel
From: Timothy R. Murphy, Legal Advisor *TRM*
Subject: Report On Comments Regarding Proposed Rule (90 CSR 3)

The only comments received during the 30-day comment period came from employees at the West Virginia Penitentiary and Huttonsville Correctional Center. Most of the suggested changes have been incorporated into the approved rule.

1. 4.1 should require that furlough-eligible inmates must have completed their minimum sentence; merely using the term "parole eligible" was felt to be unclear inasmuch as inmates may interpret this as including any inmate who is eligible to see the Parole Board at some time in the future. It was also suggested that the West Virginia Penitentiary eligibility criteria should include a requirement of no finding of misconduct during the preceding six months (as is the case for the other institutions). Finally, it was suggested that only minimum or trusty inmates with outside clearance be eligible for furloughs out of West Virginia Penitentiary. All of these comments were deemed reasonable and have been incorporated into the approved rule.

2. It was suggested that the rule specifically state that a furlough is a privilege rather than a right. This suggested change was felt to be unnecessary and was not incorporated.

3. Denial of furlough should be a non-grievable issue. Since virtually every facet of prison life is grievable, it was felt that any attempt to exclude furlough denials would be unnecessary. Inmate complaints will, if deemed non-grievable, find some other forum, e.g letter to the Commissioner, the press, legislators, etc. This suggestion was not incorporated into the final rule.

4. Amend 4.2 to require that an inmate at HCC, to be eligible, must be within two years rather than one year of his initial parole eligibility date. This was felt to be too restrictive and was rejected.

5. Add the following restrictions to 5.1: "F. Prison officials have reasonable suspicion that the inmate intends to become involved in illicit behavior. G. Prison officials have reasonable cause to believe that the inmate, while on furlough, may cause emotional stress to members of his own family, the victim, members of the victim's family or any witnesses involved in his case. H. Serious sex offenders." All of the proposed additions were felt to be reasonable and have been incorporated into the approval rule.

6. Amend 6.5 (a) by allowing a law enforcement officer as well as the monitoring officer to charge an inmate with a furlough violation. Since any charge of a violation may be relayed by a law enforcement officer to the monitoring officer, it was felt that it would be unnecessary to add this provision. It is unlikely that local law enforcement officers would become knowledgeable enough about the furlough procedures to insure adequate charging of inmates.

7. Amend 7.1 to specify that furloughs to attend funerals or to visit sick relatives applies only to immediate family members of the inmate. This suggestion is incorporated into the final rule because it was felt the specificity was necessary.

8. Amend 7.1 to permit emergency furloughs to allow inmates to attend special medical appointments. This suggestion is incorporated into the final rule.

9. Amend 4.2 to require that eligible inmates have overall custody rating of minimum or community. Since this suggestion is in keeping with the prison's outside clearance classification requirements, it is incorporated into the final rule.

TRM:vg

FISCAL NOTE
(Submit 4 copies)

HD NO. _____ DRAFT NO. _____

EXPLAIN IN A CLEAR, CONCISE MANNER WHAT EFFECT THIS MEASURE WILL HAVE ON THE COSTS AND REVENUES OF STATE GOVERNMENT.

FISCAL NOTE TO Proposed Agency Rule (90 CSR 3) Inmate Furloughs

(GIVE BILL OR RESOLUTION NUMBER WHEN AVAILABLE. OTHERWISE IDENTIFY BY SUBJECT, CODE REFERENCE, ETC.)

This rule will have a negligible impact on the Department of Corrections inasmuch as it will merely involve some additional paperwork by existing institutional staff.

DATE

9-19-88

AGENCY

Corrections

AUTHORIZED REPRESENTATIVE

T.L. [Signature]