

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Corrections TITLE NUMBER: 90

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 NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: 90

Employment of Displaced Correctional Employees

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) _____

SECTION _____, PASSED ON _____

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 22, 1995



AUTHORIZED SIGNATURE

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

Division of Corrections

Legislative Rule

Title 90 Series 4

Promulgation History

The West Virginia Legislature created West Virginia Code § 25-1-21 in 1992 to provide for the transfer and placement of state employees displaced from their jobs by the closure of the West Virginia Penitentiary at Moundsville. This rule operationalizes this section of the Code by providing the specific procedures by which employees affected by the closure of the facility are transferred to other employment opportunities.

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

SERIES 4
EMPLOYMENT OF DISPLACED CORRECTIONAL EMPLOYEES
W. VA. CODE §§ 25-1-1 ET SEQ.

§ 90-4-1. General.

1.1. Scope. -- This legislative rule establishes the procedure for the transfer of displaced correctional employees.

1.2. Authority. -- W. Va. Code § 25-1-21.

1.3. Filing date. --

1.4. Effective date. --

§ 90-4-2. Definitions.

2.1. Closure: The discontinuance of any service or unit, whether singular or collective, within the West Virginia Penitentiary.

2.2. Employee: A person who has successfully completed a six-month probationary period.

2.3. Employment priority list: A list of correctional officers employed full time at the West Virginia Penitentiary, at the time of closure, who are in good standing.

2.4. Good standing: Any employee not under disciplinary sanction or on probationary status. Disciplinary sanction for the purposes of transfer under W. Va. Code § 25-1-21 is any suspension or demotion which occurred within twelve months prior to transfer.

2.5. Length of service: Tenure in the classified service.

2.6. Preference: Giving a priority in hiring to those displaced employees, who are otherwise qualified based on seniority and fitness over other applicants for correctional officer positions at Mount Olive, Huttonsville Correctional Center and Northern Regional Jail and Correctional Facility in accordance with W. Va. Code § 25-1-21 and § 29-6-10(6).

2.7. Probationary Period: A trial work period of six months designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the tasks assigned, adjust himself or herself to the organization and comply with the agency's policy and mission.

2.8. Recall: The reemployment of an employee affected by a reduction-in-force as specified in W. Va. Code § 29-6-10(6) and section 6.2(e) of this rule.

2.9. Staffing Requirements: The number and classification of positions available.

2.10. Transfer; Layoff List: A list of employees at the West Virginia Penitentiary who are in good standing, by occupational grouping, ranked by length of service.

§ 90-4-3. Service of Notice.

3.1. Where practical the commissioner shall, not less than thirty days prior to staffing in the Mount Olive Correctional Complex, Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, give notice of the open position staffing for either an existing or new operational unit, or the closure of a unit or section, or discontinuance of a service within the West Virginia Penitentiary, to all employees of the Penitentiary. The Commissioner of Corrections shall consider security by not announcing the exact dates of closures.

§ 90-4-4. Closure of a Unit or Section; Discontinuance of a Service.

4.1. Criteria for Transfer. Employees are eligible for transfer to another institution as units or sections of the West Virginia Penitentiary are closed or services discontinued. In selecting employees for transfer, the commissioner, based on staffing requirements, shall give priority for employment to any person on a transfer list as defined in section 2 of this rule to a position equivalent to the position that person currently holds at the West Virginia Penitentiary or a lower position within the same occupational group.

4.2. Transfer. All transfers shall be in compliance with Division of Personnel Administrative Regulations. Promotion and demotion opportunities which may occur will be afforded in accordance with Division of Personnel Administrative Regulations and applicable Division of Corrections policies.

§ 90-4-5. Closure of Facility.

5.1. Reduction-in-Force. No less than 15 days prior to final closure of the West Virginia Penitentiary at Moundsville, the commissioner shall give written notice to remaining employees of a reduction-in-force. The notice and reduction in force shall be in accordance with W. Va. Code § 29-6-10(5), (6), W. Va. Code § 5F-2-2(d), the Division of Personnel Administrative Regulations, and section 3 of this rule.

5.2. Reemployment. Any correctional employee not selected for transfer to Mount Olive Correctional Complex, Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, and who wishes to remain eligible for future employment at the facilities, shall remain on a priority employment list as defined in section 2 for a two-year period commencing with the date of the final closure of the West Virginia Penitentiary.

In selecting individuals for future employment at these facilities, the commissioner shall, based on staffing requirements, give priority to any correctional employee on the priority employment list in an available position equivalent to the position that person held at the West Virginia Penitentiary unless the commissioner determines that that person is physically or mentally unfit.

§ 90-4-6. Procedures.

6.1. Generally. Procedures for the transfer process shall be developed by the West Virginia Division of Corrections and approved by the West Virginia Division of Personnel.

6.2. Procedures for Transfer and Reemployment.

6.2(a). The Department of Public Safety's Division of Corrections shall establish preliminary staffing requirements at the Mount Olive Correctional Complex, the Huttonsville Correctional Center and the Northern Regional Jail and Correctional Complex at Moundsville.

6.2(b). The Division of Corrections shall develop and maintain rank-ordered lists of all current employees of the West Virginia Penitentiary, who are in good standing. The lists shall be by occupational grouping and ranked by length of service.

6.2(c). As staffing requirements occur for either existing or new operational units at the Mount Olive Correctional Complex, the Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, Corrections shall offer available positions to existing employees of the West Virginia Penitentiary at Moundsville.

6.2(c) (1). The Division of Corrections shall offer employees on the transfer list, in rank order, an opportunity for transfer to positions equivalent to the positions that they currently hold at the Penitentiary or lower positions within the same occupational grouping. An employee who declines an opportunity to transfer may remain on the transfer list and remain eligible for transfer to future vacant positions at the Mount Olive Correctional Complex, the Huttonsville Correctional Center and the Northern Regional Jail and Correctional Complex at Moundsville until closure of the Penitentiary at Moundsville.

6.2(c) (2). Transfers, promotions, demotions or lateral class changes which may occur will follow W. Va. Code § 25-1-21, applicable Division of Personnel Administrative Regulations, and Division of Personnel policies.

6.2(d). No less than fifteen days prior to the closure of the West Virginia Penitentiary, all remaining employees at the Penitentiary shall be notified of the reduction-in-force in accordance with applicable Division of Personnel Administrative Regulations.

6.2(e). The "bumping" provisions of W. Va. Code § 29-6-10(5) and the Division of Personnel Administrative Regulations are not applicable to employees affected by a reduction-in-force upon closure of the West Virginia Penitentiary at Moundsville, since that organizational unit ceases to remain in operation and likewise all positions of that organizational unit cease to exist. Other provisions of the aforementioned sections are applicable.

§ 90-4-7. Equal Employment Opportunity.

7.1. Non-discrimination. All employees are entitled to an equal employment opportunity and no employee shall be discriminated against based on race, color, religion, national origin, sex, age, disabled veteran status, Vietnam era veteran status, political affiliation, or disability.

Bill-Corrections, Employment

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H. B. 2146

(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)

(Introduced January 23, 1995; referred to the
Committee on the Judiciary.)

10 A BILL to amend and reenact section one, article six, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 division of corrections to promulgate legislative rules
14 relating to the employment of displaced correctional
15 employees.

16 Be it enacted by the Legislature of West Virginia:

17 That section one, article six, chapter sixty-four of the code
18 of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND
21 PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

22 §64-6-1. Division of corrections.

23 (a) The legislative rules filed in the state register on the
24 twentieth day of September, one thousand nine hundred

1 eighty-eight, modified by the commissioner of the department of
2 corrections to meet the objections of the legislative rule-making
3 review committee and refiled in the state register on the
4 thirteenth day of January, one thousand nine hundred eighty-nine,
5 relating to the commissioner of the department of corrections
6 (parole supervision), are authorized.

7 (b) The legislative rules filed in the state register on the
8 twentieth day of September, one thousand nine hundred
9 eighty-eight, modified by the commissioner of the department of
10 corrections to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 thirteenth day of January, one thousand nine hundred eighty-nine,
13 relating to the commissioner of the department of corrections
14 (furlough programs for inmates under the custody and control of
15 the commissioner of the department of corrections), are
16 authorized.

17 (c) The legislative rules filed in the state register on the
18 sixteenth day of August, one thousand nine hundred ninety-three,
19 modified by the division of corrections to meet the objections
20 of the legislative rule-making review committee and refiled in
21 the state register on the sixteenth day of November, one thousand
22 nine hundred ninety-three, relating to the division of
23 corrections (parole supervision), are authorized.

24 (d) The legislative rules filed in the state register on the
25 twenty-seventh day of July, one thousand nine hundred ninety-

1 four, modified by the division of corrections to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the twenty-second day of
4 November, one thousand nine hundred ninety-four, relating to the
5 division of corrections (employment of displaced correctional
6 employees), are authorized.

7

8 NOTE: The purpose of this bill is to authorize the Division
9 of Corrections to promulgate legislative rules relating to the
10 employment of displaced correctional employees.

11 -----
12 Strike-throughs indicate language that would be stricken from
13 the present law, and underscoring indicates new language that
14 would be added.

SENATE BILL NO. 90

(By Senators Manchin, Anderson, Eoley, Grubb and
Macnaughtan)

*[[Introduced January 20, 1995; referred to the
Committee on the Judiciary]

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KEN HECHLER
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(Plus all the volunteer
help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

March 28, 1995

Rita A. Stuart
Corrections
112 California Ave., Rm. 300
Charleston, WV 25305

SB 88 authorizing, Title 90, Series 4, Employment of displaced correctional employees, passed the Legislature on **March 10, 1995**. It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 88, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 88** section 64-6-1(c). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division



FILED

WILLIAM H. HARRINGTON
Chief of Staff

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APR 19 1 44 PM '96 JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA OFFICE OF WEST VIRGINIA
SECRETARY OF STATE SECRETARY OF STATE

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

TO: Jill Jerabeck

AGENCY: Corrections

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 1, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 4 TITLE: 90

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: William R. DeLoe

TITLE OF PERSON SIGNING: Deputy Commissioner - Operations

DATE: April 18, 1996

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.