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OFFICE ... VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Loita Butcher
Corrections, WV Division of
Capitol Complex
Building 4, Room 300

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Electronic Monitoring Offenders, 90CSR8**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
   (a) as originally filed ____
   (b) as modified by the agency ✓

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ____

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached. ____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Division of Corrections
Subject: Electronic Monitoring of Offenders, 90CSR8
Counsel: Rita A. Pauley
Date: October 6, 2000

PERTINENT DATES

Filed for public comment: June 22, 2000
Public comment period ended: July 31, 2000
Filed following public comment period: September 1, 2000
Filed LRMRC: September 1, 2000
Filed as emergency:

Fiscal Impact: The agency anticipates an annual increase in expenditures of $219,000. However, it is believed that the fees charged to the inmates being supervised will offset the total cost of the administration of this program.

ABSTRACT

This new legislative rule written to comply with the requirements of West Virginia Code §25-1-14 which establishes the policy and guidelines for the electronic monitoring program for offenders under the jurisdiction of the Division of Corrections.

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section.

Section 3 provides that this rule applies to all offenders committed to the custody or supervision of the Division of Corrections whether through a court order, parole board or the Interstate Compact agreement.

Section 4 establishes the procedure for the program. The Division of Corrections will determine the amount of the daily monitoring fee. Offenders participating in the program are required to submit the cumulative weekly total of the fee by certified check or money order each week while on electronic monitoring supervision.

Offenders who have been selected to participate in the electronic program may request an exemption or reduction in the amount of the daily monitoring fees. The request must provide sufficient financial and other information to allow a determination to be made. If the request for exemption or reduction is denied, the offender will be notified immediately. The offender may appeal that decision to the Commissioner of Corrections. The offenders who are denied the request for exemption or reduction must pay the arrearages accrued while the decision was pending. If the request for exemption or reduction is approved, it is valid for 30 days so long as the circumstances under which it was granted remain the same. If additional time is needed, a new request must be submitted.

Offenders who are unable to pay for electronic monitoring services are required to perform community work service in lieu of paying for the monitoring fee. If the offender fails to pay the fees as assessed, the offender may be removed from the program and returned to a correctional institution and collection actions may be instituted.

AUTHORITY

Statutory authority: W.Va. Code, §25-1-14 which provides, in part, as follows:

> The commissioner may use electronic monitoring equipment to aid in the supervision of offenders. The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative

rule promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, to help defray the costs of the purchase and use of the equipment and the division of correction's operational costs: *Provided*, That an offender's inability to pay a fee does not preclude the offender from being eligible for this program.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes, however, more specific information regarding who is eligible for the program and how those offenders will be chosen would be helpful.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.