

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 454.10

DATE: 29 October 2021

SUBJECT: CONDITIONAL RELEASE

FILED

2021 OCT 29 P 2:31

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

POLICY DIRECTIVE

PURPOSE:

To maintain a mechanism that facilitates the timely release of inmates to one hundred and eighty (180) days post-release supervision in accordance with WV Code §15A-4-17a.

REFERENCE:

WV Code §§15A-4-17a; 62-12-17; 62-12-19 and 62-13-2.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DCR Policy Directive 151.05, dated 01 August 2020.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation (DCR) that have custody of or supervise adult offenders. This Policy is available for general distribution and is to be made available for inmate/offender review.

DEFINITIONS:

Case Supervisor: The DCR staff member assigned by the Superintendent or Unit Manager to manage the caseload of a particular inmate or group of inmates (e.g., Corrections Case Manager, Reentry Coordinator, Corrections Program Specialist, or Correctional Counselor).

Minimum Discharge Date (MDD)/Final Release Date: The inmate's scheduled date of release from his/her sentence provided the inmate remains continuously incarcerated and does not lose any good time.

POLICY:

- I. Pursuant to WV Code §15A-4-17a, an inmate serving a sentence for a felony offense not referenced in WV Code §15A-4-17 (**Attachment #1**), who has not been granted discretionary parole one hundred and eighty (180) days prior to his/her minimum discharge date (MDD) may be released and subject to a period of one hundred and eighty (180) days of supervision when he/she is one hundred and eighty (180) days from MDD.
- II. Inmates committed as young adults; inmates sentenced to an alternative jail term; inmates serving sentences for violating supervised release; inmates serving a sentence in another state or federal custody who discharge their West Virginia term prior to release from the other jurisdiction; or inmates who have a detainer for a consecutive jail term, a federal detainer, or a detainer from another state do not qualify for conditional release.
- III. Upon receipt of a court order sentencing an inmate on felony offenses not requiring post-release mandatory supervision, the DCR Director of Records & Interstate Compact or designee shall work in conjunction with the facility's Records Supervisor and Reentry Coordinator to ensure the following.
 - A. The inmate shall be supplied a time sheet reflecting his/her current MDD.
 - B. An MDD of less than nine (9) months will deem an inmate ineligible for Conditional Release due to the time required to submit and investigate a parole release plan.
 - C. Appropriate notations are made in the Offender Information System (OIS) to indicate the inmate is eligible for Conditional Release if not granted discretionary parole.
 - D. Case Supervisors shall meet with inmates ninety (90) days prior to the inmate reaching one hundred and eighty (180) days from his/her MDD and explain the purpose of this supervision is to assist the inmate in successful reentry and to review the stipulations of Conditional Release, including the inmate cannot be on disciplinary detention or segregation at the time of his/her release. A parole release plan for each inmate should be generated in OIS at that time. Parole release plans will be investigated in accordance with DCR Policy Directive 454.01. Inmates must have an approved parole release plan prior to release.
 - E. The DCR Director of Records & Interstate Compact or designee will provide an Order of Release on Conditional Post-Release Supervision (**Attachment #2**) including the Discharge Date from Supervision to the Reentry Coordinator and Case Supervisor prior to the inmate's MDD. The original shall be placed in the inmate's legal/booking file and uploaded to the appropriate file in OIS.

- F. Inmates who have not completed Pre-Parole Orientation class within the previous twelve (12) months will complete the orientation prior to release.
 - G. The Reentry Coordinator/designee will follow the guidelines for out-processing to parole supervision as contained in DCR Policy Directive 454.12 at least twenty-four (24) hours prior to the inmate reaching one hundred and eighty (180) days from his/her MDD.
 - H. Inmates will be released in accordance with all guidelines as contained in DCR Policy Directive 457.02 and can be released any day of the week including non-business days.
 - I. Upon the inmate's release, the Reentry Coordinator or designated staff will release the inmate in OIS according to established procedures and ensure the entry of the maximum parole discharge date.
- IV. Parole Services will supervise offenders on Conditional Release Supervision in accordance with DCR Policy Directive 700.00.
- V. Violations of the term(s) of supervision may result in graduated sanctions.
- A. If reasonable cause is found to exist that an offender has violated term(s) of his/her release; except in the case of absconding supervision, new criminal conduct other than minor traffic violations or simple possession of a controlled substance or a violation of a special condition of supervision designed to protect the public or the victim;
 - B. After consultation with and written approval by the Director of Parole Services;
 - 1. for the first offense, require the offender to serve a period of confinement up to sixty (60) days;
 - 2. or for the second violation, require the offender to serve a period of confinement up to one hundred twenty (120) days.
 - C. If an inmate on Conditional Release Supervision fails to abide by the rules and regulations even after the afforded graduated sanctions, or if the offender has served both a sixty (60) day and one hundred twenty (120) day incarceration sanction and commits a new violation, the supervising Parole Officer will seek revocation.
- VI. The following procedures will be followed when offenders receive a sanction to either waive or request a hearing by the Hearing Examiner:
- A. Written notice to the offender listing the specific condition(s) of release the offender is alleged to have violated, the date(s) the alleged violation(s) occurred, the nature of the violation(s), the date the offender received the sanction or was incarcerated as a sanction, and the date the offender was served with the written notice.

- B. The written notice provided to the offender shall also be provided to the Hearing Examiner designated by the Commissioner to conduct the sanction hearings.
 - C. The offender shall have the right to request or waive the sanction hearing. This shall be documented by the Parole Officer or Hearing Examiner.
 - 1. If the inmate waives the sanction hearing, no further action is needed. The Parole Officer/Hearing Officer will send a copy of the signed waiver to the Assistant Commissioner of the Bureau of Community Corrections, Central Office Parole Services staff, and Central Office Records for the offender's file.
 - 2. If the offender requests a sanction hearing, the Hearing Examiner will conduct the sanction hearing within the first forty-five (45) days of the sanction to determine if there is probable cause to believe the offender violated the conditions of his/her release and either uphold the sanction imposed or modify the sanction imposed by the Parole Officer.
 - 3. Written notification of this decision will be provided to the offender, Assistant Commissioner of the Bureau of Community Corrections, Central Office Parole Services staff and Central Office Records for the offender's file.
- VII. The revocation process shall, as a minimum, have the following components:
- A. Written notice to the offender listing the specific condition(s) of release the offender is alleged to have violated, the date(s) the alleged violation(s) occurred, the nature of the violations(s), the date the offender was placed in jail pursuant to the revocation, and the date the offender was served with the written notice.
 - B. The written notice provided to the offender shall also be provided to the Hearing Examiner designated by the Commissioner to conduct the preliminary/probable cause hearings.
 - 1. The inmate shall have the right to request or waive the preliminary/probable cause hearing; such waiver shall be signed by the inmate or, if the inmate refuses to sign, documented by the Parole Officer.
 - a. If the inmate waives the preliminary/probable cause hearing the Parole Officer shall provide written notification to the inmate, Assistant Commissioner of the Bureau of Community Corrections, Central Office Parole Services staff, and the Hearing Examiner designated to conduct final revocation hearings.
 - b. If the inmate requests a preliminary/probable cause hearing the Parole Officer shall provide written notification to the inmate, Assistant Commissioner of the Bureau of Community Corrections, Central Office Parole Services staff, and the Hearing Examiner designated to conduct final revocation hearings. The Hearing Examiner will then cause a hearing to be scheduled to review the

allegations within forty-five (45) days to determine if there is probable cause to believe that the inmate violated conditions of his/her release.

2. The Hearing Examiner designated by the Commissioner to conduct the final revocation hearings shall ensure that, at a minimum, the following elements are afforded.
 - a. The final revocation hearing shall be held within thirty (30) days of the date of the preliminary/probable cause hearing, or the waiver of such hearing, excluding continuances.
 - b. The inmate shall have the right to be represented by an attorney.
 - c. The inmate and the inmate's attorney (if any) shall be provided written notice of the final revocation hearing a minimum of five (5) days prior to the hearing.
 - d. The inmate shall have the right to waive the final revocation hearing.
 - e. The inmate or their attorney shall have the right to call witnesses and offer testimony on their behalf.
 - f. The inmate or their attorney shall have the right to cross-examine witnesses against them.
 - g. The inmate or their attorney shall have the right to request a continuance, which shall be the Hearing Examiner's discretion to grant or deny.
 - h. The Hearing Examiner shall consider the facts presented and determine if there is a preponderance of evidence to indicate that the alleged violations occurred. If a preponderance of evidence supporting the allegations is found, the Hearing Examiner shall determine, based on mitigating, extenuating, or aggravating circumstances, if the inmate should be returned to Conditional Release supervision or if the inmate should be re-incarcerated in a Division of Corrections & Rehabilitation facility.
 - i. The Hearing Examiner shall formulate a detailed, written report of his/her findings and recommendations, and provide the report to the Commissioner of the Division of Corrections & Rehabilitation or designee for final review and approval.
 - j. The Commissioner/designee shall approve or disapprove the recommendations of the Hearing Examiner.
 - k. Written notice of the Commissioner's/designee's decision shall be provided to the inmate, the inmate's attorney (if any), the Hearing Examiner, Central Office Parole Services staff, and the Director of Records & Interstate Compact.

- l. If the inmate is to be returned to Conditional Release supervision, the supervising Parole Officer shall ensure the inmate is released from jail and placed under supervision.
 - m. If the inmate is to be re-incarcerated in a Division of Corrections & Rehabilitation facility, the inmate's minimum discharge date will be recalculated, and a new timesheet generated and distributed, as appropriate.
- VIII. The DCR Director of Records and Interstate Compact/designee shall provide an Official Certificate of Discharge from conditional release supervision to the supervising parole officer prior to the offender's discharge date and ensure the appropriate field in OIS is marked to indicate the offender has been discharged from supervision.

ATTACHMENT(S):

- #1 List of Felony Offenses Not Eligible for Conditional Release (4 pages)
- #2 Order of Release on Conditional Post-Release Supervision

APPROVED SIGNATURE: _____


Betsy C. Jividen, Commissioner

10-15-21
Date

FELONY OFFENSES NOT ELIGIBLE FOR CONDITIONAL RELEASE

CRIMES AGAINST THE PERSON

- 61-2-1 First and Second Degree Murder Defined; Allegations in Indictment for homicide
- 61-2-2 Penalty for Murder of First Degree
- 61-2-3 Penalty for Murder of Second Degree
- 61-2-4 Voluntary Manslaughter
- 61-2-5a Concealment of Deceased Human Body
- 61-2-6 Homicide Punishable Within State if Injury Occurs Within and Death Without, or Vice Versa
- 61-2-7 Attempt to Kill or Injure by Poison
- 61-2-8 Abortion
- 61-2-9 Malicious or Unlawful Assault; Assault; Battery
- 61-2-9a Stalking; Harassment
- 61-2-9b Penalties for Malicious or Unlawful Assault or Assault of a Child Near a School
- 61-2-9c Wanton Endangerment Involving the Use of Fire
- 61-2-9d Strangulation; Suffocation and Asphyxiation
- 61-2-10 Assault During Commission of or Attempt to Commit a Felony
- 61-2-10a Violent Crimes Against the Elderly; Sentence Not Subject to Suspension or Probation
- 61-2-10b Malicious Assault; Unlawful Assault; Battery and Assault on Governmental Representatives, Health Care Providers, Utility Workers, Law-Enforcement Officers, Correctional Employees and Emergency Medical Service Personnel; Definitions
- 61-2-12 Robbery or Attempted Robbery
- 61-2-13 Extortion or Attempted Extortion by Threats
- 61-2-14 Abduction of Person; Kidnapping or Concealing Child
- 61-2-14a Kidnapping
- 61-2-14b Venue of Offenses under 61-2-14 and 61-2-14a
- 61-2-14c Penalty for Threats to Kidnap or Demand Ransom
- 61-2-14d Concealment or Removal of Minor Child from Custodian or from Person entitled to Visitation
- 61-2-14e One Aiding or Abetting in Offense under 61-2-14, 61-2-14a, 61-2-14c, 61-2-14d Guilty as Principal Venue
- 61-2-14f Penalties for Abduction of a Child Near a School
- 61-2-14h Prohibition of Purchase or Sale of Child
- 61-2-16a Malicious Assault; Unlawful Assault; Battery and Recidivism of Battery; Assault on a Driver, Conductor, Motorman, Captain, Pilot or other Person in Charge of Any Vehicle Used for Public Conveyance
- 61-2-28 Domestic Violence – Criminal Acts

- 61-2-29 Abuse or Neglect of Incapacitated Adult
- 61-2-29a Death of an Incapacitated Adult by Caregiver
- 61-2-29b Financial Exploitation of an Elderly Person, Protected Person or Incapacitated Adult

CRIMES AGAINST PROPERTY (WHERE AN INDIVIDUAL IS PHYSICALLY LOCATED AT TIME OF OFFENSE)

- 61-3-1 Burning, etc., of a Dwelling or Outbuilding; First Degree Arson
- 61-3-4 Attempt to Commit Arson; Fourth Degree Arson (only applicable if a residence and when a person is physically located at the residence)
- 61-3-7 Causing Injuries During an Arson-Related Crime (only applicable if a residence and when a person is physically located at the residence)
- 61-3-11 Burglary; Entry of Dwelling or Outhouse (only applicable if a residence and when a person is physically located at the residence)

OFFENSES INVOLVING EXPLOSIVES

- 61-3E-3 Illegal Possession of Destructive Devices, Explosive Materials or Incendiary Devices
- 61-3E-4 Criminal Use of Destructive Device, Explosive Material or Incendiary Devices
- 61-3E-5 Causing Death or Injury
- 61-3E-6 Causing Death or Injury to an Explosives Detention Animal
- 61-3E-7 Manufacture, Purchase, Sale, Advertising for Sale, Transporting or Possession or Use of Hoax Bomb; Possession or Use in Commission of a Felony
- 61-3E-8 Theft of Explosive Material from Storage Magazines or Buildings
- 61-3E-9 Receipt, Possession, Storage, Sale or Transportation of Stolen Explosive Material;
- 61-3E-10 Wanton Endangerment Involving Destructive Devices, Explosive Materials or Incendiary Devices

CRIMES AGAINST CHASTITY, MORALITY AND DECENCY (WHERE VICTIM WAS A MINOR CHILD)

- 61-8-1 Bigamy
- 61-8-6 Detention of Person in Place of Prostitution
- 61-8-7 Procuring for House of Prostitution; Penalty; Venue; Competency as Witness; Marriage No Defense
- 61-8-8 Receiving Support from Prostitution; Pimping; Penalty; Prostitute May Testify
- 61-8-9 Indecent Exposure
- 61-8-12 Incest
- 61-8-14 Disinterment or Displacement of Dead Body or Part Thereof; Damage to Cemetery or Graveyard
- 61-8-19 Cruelty to Animals

- 61-8-19a Animal Fighting Ventures Prohibited
- 61-8-19b Attendance at Animal Fighting Ventures Prohibited
- 61-8-19c Wagering at Animal Fighting Venture Prohibited
- 61-8-28 Criminal Invasion of Privacy
- 61-8-28a Nonconsensual Disclosure of Private Intimate Images
- 61-8-29 Criminal Loitering by Persons on Supervised Release
- 61-8-31 Therapeutic Deception

PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS
(WHERE VICTIM WAS A MINOR CHILD)

- 61-8A-2 Distribution and Display to Minor of Obscene Matter
- 61-8A-4 Use of Obscene Matter with Intent to Seduce Minor
- 61-8A-5 Employment or Use of Minor to Produce Obscene Matter or Assist in Doing Sexually Explicit Conduct

SEXUAL OFFENSES

- 61-8B-3 Sexual Assault in the First Degree
- 61-8B-4 Sexual Assault in the Second Degree
- 61-8B-5 Sexual Assault in the Third Degree
- 61-8B-7 Sexual Abuse in the First Degree
- 61-8B-8 Sexual Abuse in the Second Degree – ONLY IF PREVIOUSLY CONVICTED OF SEXUALLY VIOLENT OFFENSE AS DEFINED IN 15-12-2
- 61-8B-9b Enhanced Penalties for Subsequent Offenses Committed by Those Previously Convicted of Sexually Violent Offenses Against Children
- 61-8B-10 Imposition of Sexual Acts on Persons Incarcerated or Under Supervision

FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS (WHERE VICTIM WAS A MINOR CHILD)

- 61-8C-2 Use of Minors in Filming Sexually Explicit Conduct Prohibited
- 61-8C-3 Distribution and Exhibiting of Material Depicting Minors Engaged in Sexually Explicit Conduct Prohibited

CHILD ABUSE

- 61-8D-2 Murder of a Child by Parent, Guardian or Custodian or Other Person by Refusal or Failure to Supply Necessities, or by Delivery, Administration or Ingestion of a Controlled Substance
- 61-8D-2a Death of a Child by a Parent, Guardian, or Custodian or Other Person by Child Abuse
- 61-8D-3 Child Abuse Resulting in Injury; Child Abuse Creating Risk of Injury
- 61-8D-3a Female Genital Mutilation

- 61-8D-4 Child Neglect Resulting in Injury, Child Neglect Creating Risk of Injury
- 61-8D-4a Child Neglect Resulting in Death
- 61-8D-5 Sexual Abuse by A Parent, Guardian, Custodian or Person in a Position of Trust to a Child; Parent, Guardian, Custodian or Person in a Position of Trust Allowing Sexual Abuse to be Inflicted Upon a Child; Displaying of Sex Organs by Parent, Guardian, or Custodian
- 61-8D-6 Sending, Distributing, Exhibiting, Possessing, Displaying or Transporting Material by Parent, Guardian, or Custodian, Depicting a Child Engaged in Sexually Explicit Conduct

STATE OF WEST VIRGINIA



DIVISION OF CORRECTIONS AND REHABILITATION
CHARLESTON, WEST VIRGINIA

ORDER OF RELEASE ON CONDITIONAL POST-RELEASE SUPERVISION

KNOW ALL MEN BY THESE PRESENTS: That on _____ day of _____, 20____,
_____, OID # _____, a prisoner of the State of West Virginia, confined
at _____, as required by WV State Code
§15A-4-17a will be released on _____ day of _____, 20____.
_____ intends to lead an orderly and law-abiding life as a worthwhile and
useful citizen, and that the release of the above stated person will be compatible with the best
interests and welfare of society. The Commissioner of the Division of Corrections and
Rehabilitation doth hereby order that the said person be released and is hereby granted a release
on conditional post-release supervision in accordance with the laws of West Virginia and subject
to the rules and regulations prescribed by the Commissioner of the Division of Corrections and
Rehabilitation regarding release from the institution, and subject to the rules and regulations
governing supervision made in pursuance thereof.

Done this the _____ day of _____, 20____.

Commissioner

by WVDCR Director of Records & Interstate Compact

DISCHARGE DATE FROM SUPERVISION: _____