

# CHAPTER 130

## Department of Probation, Parole and Pardon Services

### **130–10. Release of Inmates Pursuant to the Prison Overcrowding Powers Act.**

(Statutory Authority: 1976 Code § 24-3-2030)

A. Upon a declaration by the Governor of a prison system overcrowding state of emergency as set forth in § 24-3-1160, Code of Laws of South Carolina, 1976, as amended June 3, 1986, the Board of Probation, Parole and Pardon Services is charged with the responsibility of determining which qualified prisoners are to be released.

B. A qualified prisoner, for purposes of this regulation, means: (1) an individual convicted of a non-violent offense; (2) incarcerated in an institution or designated facility of the South Carolina Department of Corrections; (3) is an individual over whom the Department of Probation, Parole and Pardon Services may assume jurisdiction; and (4) if serving a sentence of two years or more must have met their first parole eligibility date without benefit of earned credits that may have reduced such eligibility.

C. Prisoners are not qualified to be released if:

(1) They are serving a sentence for commission of a violent crime. Violent crimes, for purposes of this regulation, are:

- A. Murder
- B. Armed Robbery
- C. Criminal Sexual Conduct in the First or Second Degree
- D. Assault and Battery with Intent to Kill
- E. Kidnapping
- F. Burglary in the First Degree, or Burglary in the Second Degree under § 16-11-312 (B)
- G. Arson in the First Degree
- H. Drug Trafficking as contained in § 44-53-370 (e)
- I. Voluntary Manslaughter
- J. Violation of the Habitual Offender Act as contained in § 17-25-45
- K. Accessory Before the Fact of any of the above offenses.

(2) They are currently in the Department of Corrections Extended Work Release Program.

(3) They are serving a Youthful Offender Sentence as set forth in § 24-19-10, et. seq.

(4) They are found to be in contempt of court and are currently incarcerated for such.

D. The Department of Probation, Parole and Pardon Services will apply a Risk Assessment instrument to qualified prisoners. The Risk Assessment Instrument will be used to determine the projected risk of harm to the community at large that would be posed by the release of an individual qualified prisoner.

1. The instrument shall take into account at least the following:

- a. Nature and seriousness of current offenses
- b. Nature and seriousness of prior convictions
- c. Institutional adjustment
- d. Performance under prior community supervision
- e. Age

2. Qualified prisoners found to pose a low or medium level risk to the community after application of the risk assessment instrument shall be released before prisoners who pose a potentially higher risk to the community. Qualified prisoners posing a low or medium risk who have served the greatest percentage of their period of incarceration will be released prior to qualified prisoners who have served a lesser percentage of their period of incarceration.

E. The existence of certain temporary conditions will act as a bar to consideration for release until the condition has passed. These temporary disqualifying conditions are as follows:

1. If the prisoner has any pending holds, wanteds or detainers;
2. If the prisoner has a pending major institutional rule infraction;
3. If the prisoner has been removed from participation in a community program, such to include parole, extended work release, work release, supervised furlough and the Prison Overcrowding Powers Act, within six months of his release eligibility date;
4. If the prisoner has escaped or been returned from escape within six months of his release eligibility date;
5. The prisoner may not be released directly from a psychiatric unit;
6. If the prisoner does not have a place of residence with a verifiable address approved by the Department of Probation, Parole and Pardon Services within the State of South Carolina.

F. Before releasing a qualified prisoner the Department of Probation, Parole and Pardon Services will first determine if a victim's impact statement, as such is set forth in § 16-3-1530 (C), Code of Laws of South Carolina, 1976, as amended, has been filed with the Department of Probation, Parole and Pardon Services. If a victim's impact statement has been received the following steps will be undertaken:

(1) The victim will be sent by certified mail with return receipt, a notification, at the most current address indicated by the victim, that the prisoner is qualified to be released under the Prison Overcrowding Powers Act. The notification will specifically request the victim to indicate if he/she has any opposition to the release of the specified prisoner.

(2) If the victim responds to the notification and indicates that a known person may be endangered by the release, then a preliminary hearing will be conducted on the matter by personnel of the Department of Probation, Parole and Pardon Services. The victim and qualified prisoner will both be notified as to the time, date and place of the preliminary hearing. No confrontational examination will be permitted at the hearing. The individual who conducts the hearing will determine if there is a reasonable likelihood that a known individual may be endangered by the release of the qualified prisoner, and will submit a recommendation regarding release to the Board of Probation, Parole and Pardon Services.

(3) The Board of Probation, Parole and Pardon Services will consider the matter, review the recommendation supplied, and determine if the release of the qualified prisoner shall occur. If release is denied under this provision, then reconsideration for release may not occur for twelve months.

G. Prior to the release of a qualified inmate by the Department of Probation, Parole and Pardon Services, pursuant to these regulations, the Department will notify, or cause to be notified, the Sheriff of the County wherein the qualified prisoner's crime was committed. This notification will advise the Sheriff that the particular qualified inmate will be released pursuant to the Prison Overcrowding Powers Act.

## **130-20. Public Service Work.**

(Statutory Authority: 1976 Code § 24-23-115)

A. Public Service Work is defined as the placement of qualifying convicted offenders in unpaid positions with non-profit or tax-supported agencies to perform a specified number of hours of work or service within a given time limit as a condition of probation or suspension of sentence.

B. Criteria for Participation

1. Legal Criteria

(a) The Courts of General Sessions may require up to five hundred hours of public service employment as a condition of probation or as a condition of suspension of sentence pursuant to § 24-23-115 and § 24-21-430. A Family Court also may require adults who violate an order of that Court to perform public service work, not to exceed three hundred hours under § 20-7-1350. As the agency designated by law to provide community supervision to adult offenders on probation or parole, the Department of Probation, Parole and Pardon Services, hereafter referred to as “DPPPS”, has the authority to supervise all adult offenders placed on public service employment as long as the following conditions exist:

(1) The offender’s probation order by the appropriate court must specify public service employment as a condition of probation as part of the offender’s original sentence or in lieu of revocation of sentence.

(2) The offender must be under the jurisdiction of the Department of Probation, Parole and Pardon Services.

(b) Magistrates and Municipal Courts may require public service work as a condition of suspension of sentence, not to exceed fifty hours pursuant to § 24-23-115. Such courts will maintain authority for supervision of offenders within their jurisdiction who are ordered to perform public service work.

## 2. Exclusionary Criteria

(a) Individuals convicted of committing the following offenses are not eligible for placement by a Court on public service work:

(1) Murder

(2) Kidnapping

(3) Voluntary Manslaughter

(4) Assault and Battery With Intent to Kill

(5) Criminal Sexual Conduct in the First Degree and Second Degree

(6) Armed Robbery

(7) Arson in the First Degree

(8) Trafficking in Drugs Pursuant to § 44-53-370(e)

(9) Burglary in the First Degree and Burglary in the Second Degree under § 16-11-312(B)

(b) Offenders who have chronic histories of drug and/or alcohol abuse who could endanger others will not be placed on the public service employment program.

(c) All offenders within the jurisdiction of magistrates and municipal courts shall be considered for acceptance into public service work programs. Offenders who have known histories of drug/alcohol abuse will be screened by the Court to minimize the risk of placing offenders in public service work programs who could endanger others in the performance of their volunteer work.

## C. Work-Site Criteria

(1) The DPPPS limits the selection of public service work-sites to public agencies defined as units of state, federal or municipal government, private non-profit entities, and charitable or service organizations. The DPPPS prohibits the use of profit-making agencies, private businesses, or proprietary agencies as part of the public service employment program. The DPPPS certifies each work-site by requiring a memorandum of agreement to be signed by DPPPS staff and the work-site representative outlining the responsibilities of the DPPPS and the work-site. The DPPPS also requires that the work-site provide a job description, outlining the specific job tasks of offenders performing public service work at that work-site.

(2) Magistrates and municipal courts will limit their selection of work-sites to public agencies defined as units of government, private non-profit entities, and charitable or service organizations. Profit-making agencies and/or private businesses will not be recruited as work-sites. Work-sites may be required to provide job descriptions to specify the tasks offenders will be performing at any given work-site.

(3) The DPPPS may share work-sites with magistrates or municipal courts as long as the work-site remains in compliance with DPPPS certification as a work-site.

#### D. Implementation of Public Service Work

(1) The DPPPS will employ Public Service Employment Coordinators who will screen and place offenders ordered to perform public service work and monitor their performance of work contracts. These Coordinators will mail a letter to work-sites as notification of an offender's possible assignment and forward a time sheet to the work-site supervisor to aid in recording and verifying offender work-hours. When an offender is terminated from his public service work, either successfully or unsuccessfully, the Coordinator will prepare a termination report detailing the circumstances of the termination. Coordinators will be responsible for maintaining the day-to-day operations of the public service employment program and will maintain close contact with circuit court judges and other court staff to facilitate proper compliance with court-ordered public service work. In county offices where sentencing volume does not justify the placement of a Coordinator, Regional Coordinators will assist supervising agents in the placement and monitoring of offenders. The direct supervision of offenders placed at work-sites is the responsibility of the supervisor designated by the work-site.

(2) All offenders who receive an order to complete public service work as part of a suspension of sentence out of magistrates or municipal courts shall be screened by a Court staff-designee for placement in an appropriate work-site. The offender will be required to sign a defendant agreement which specifies his responsibilities in performing public service work. The Court staff-designee will determine the most appropriate placement for the offender and will mail a placement notification and termination report to the work-site. The work-site supervisor will return a copy of the placement notification to the Court to verify the offender's placement and will also forward a copy of the termination report to the Court when the offender is terminated, successfully or unsuccessfully, from the work-site. The termination report will include a verified time log which records the number of work-hours performed, as well as an evaluation of the offender's public service work. The Court staff-designee will record the work-site placements of all defendants on an appropriate ledger, with expected termination dates, to verify the performance of public service work.

### **130-30. Board Training.**

The following provisions apply with respect to training requirements for members of the Board of Probation, Parole and Pardon Services.

#### A. Training for Newly Appointed Members

(1) Within ninety days of a Board member's appointment by the Governor and confirmation by the Senate, the Board member must complete a comprehensive training course of at least sixteen (16) hours encompassing components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training will include but is not limited to the following topics: (a) the elements of the decision making process through the use of evidence-based practices for determining offender risk, needs and motivations to change, including the actuarial risk/needs assessment tool used by the Department, (b) security classifications as established by the Department of Corrections, (c) programming and disciplinary processes, (d) the Department's supervision, case planning, and violation process, (e) the dynamics of criminal victimization, and (f) collaboration with corrections related stakeholders, both public and private, to increase offender success and public safety.

#### B. Annual Training

(1) Each Board member is required to complete at least eight (8) hours of training annually encompassing components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training will include but is not limited to the following topics: (a) a review and analysis of the effectiveness of the risk/needs assessment tool used by the Department, (b) a review of the Department's progress toward public safety goals, (c) the use of data in decision making, and (d) information regarding promising and evidence-based practices related to corrections and crime victim dynamics.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

### **130-40. Reentry Supervision.**

#### A. Reentry Supervision Program

(1) The Department shall operate a supervised reentry program to provide for a period of reentry supervision for eligible inmates beginning one hundred and eighty days before the date they would otherwise have been released. The Department shall establish terms and conditions of supervised reentry. The Department shall provide supervision of inmates placed on supervised reentry and utilize an evidence based assessment to determine the inmate's risk and needs.

#### B. Terms and Conditions of Supervised Reentry

(1) The terms and conditions of supervised reentry must include, but are not limited to: (a) mandatory reporting as instructed, (b) residence requirements and restrictions, (c) employment requirements and restrictions, (d) allowing agents of the Department to visit in the home, place of employment or elsewhere at any time, (e) restrictions on the use of alcohol and controlled substances, (f) submitting to alcohol and drug testing as instructed, (g) restrictions on movement and access to businesses/locations as instructed, (h) restrictions on the possession of firearms and other weapons, (i) restrictions from associations with other persons with a criminal record, (j) refraining from violation of any federal, state or local laws, (k) notifying agent of any arrest, detention or questioning by law enforcement officials, (l) paying all financial obligations as instructed, and (m) submitting to the advice and instructions of the agent.

#### C. Alleged Violations

(1) Alleged violations of the terms or conditions of supervised reentry shall be initiated pursuant to a warrant or citation issued by a probation agent setting forth the violations and shall be presented to the Department's hearing officer for final disposition. If the hearing officer determines the inmate has violated a term or condition of reentry supervision, the hearing officer may impose other terms or conditions and may continue the inmate on reentry supervision, or the hearing officer may revoke the inmate's reentry supervision and return the inmate to the Department of Corrections to serve the remainder of his or her sentence. The decision of the hearing officer regarding reentry supervision shall be final and there shall be no appeal of this decision.

**HISTORY: Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.**

### **130-50. Hearing Officer Qualifications and Preliminary Hearing Procedures.**

#### A. Hearing Officer Qualifications

(1) The hearing officer will be an employee of the Department with a Master's Degree and five (5) years of probation, parole, law enforcement or related experience; or a Bachelor's Degree and seven (7) years of probation, parole, law enforcement, or related experience.

#### B. Procedures for Preliminary Hearings

(1) When constitutionally required, the hearing officer will conduct preliminary hearings to determine probable cause on alleged violations committed by individuals under the supervision of the Department and as otherwise required by law. This includes, but is not limited to, violations concerning probation, parole and community supervision. The hearing officer will also conduct preliminary hearings and final revocation hearings for supervised furlough, youthful offender conditional release cases, and such other hearings as required by law. The hearing officer will determine the utilization of administrative sanctions where appropriate; identify problem behaviors and offer remedies whenever possible; and either determine those cases which are to be finally decided within the Department's jurisdiction, or make recommendations on those cases which must be finally decided by the Board of Probation, Parole and Pardon Services, or by the Court. The hearing officer will ensure that individuals charged with violations of their supervision conditions and scheduled for a preliminary hearing are afforded due process of law. This includes: (a) written notice of the claimed violations, (b) written notice that a hearing will take place and that its purpose is to determine whether there is probable cause to believe the individual has committed a violation, (c) the opportunity to appear and speak in his own behalf, and the opportunity to bring letters, documents or individuals who can give relevant information to the hearing officer, (d) the opportunity to confront and cross-examine any adverse witnesses who appear on behalf of the State (unless the hearing officer finds the witness would be subjected to risk of harm), and (e) a written summary or digest of what occurred at the preliminary hearing including the evidence relied upon and the determination of probable cause.

**HISTORY: Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.**

## **130–60. Administrative Sanctions for Violations.**

### **A. Establishing Administrative Sanctions**

(1). The Department shall establish an array of administrative sanctions for use by probation agents and hearing officers to respond to the most common types of violations of the terms and conditions of any supervision program operated by the Department. The array of sanctions shall be on an escalating scale to allow the probation agents and hearing officers to identify and assess the severity of a violation, to evaluate the individual risk posed by the offender, and to select the appropriate sanction response. In determining the appropriate sanctions the Department shall consider, but not be limited to: (a) the severity of the current violations, (b) the offender's previous criminal record, (c) the number and severity of previous supervision violations, (d) the offender's most recent risk/needs assessment, (e) sanctions that were imposed for previous violations, and (f) the availability of community-based programs and treatment options consistent with evidence-based practices.

### **B. Delineation of Administrative Sanctions**

(1) Administrative sanctions established by the Department may be: (a) served by a probation agent by way of a Notice of Administrative Sanction, or (b) imposed by a hearing officer by way of an Order of Administrative Sanction. The administrative sanctions are divided into two types: (a) agent/case management options, and (b) supervision/hearing officer sanctions, and may be used to respond to the most common types of supervision violations including, but not limited to: (a) failure to report, (b) failure to pay fines, fees, and restitution, (c) failure to participate in a required program of service, (d) failure to complete community service, and (e) failure to refrain from the use of alcohol or controlled substances.

(2) Agent/case management options include, but are not limited to, (a) counseling with offender, (b) referring for treatment or other community-based program, (c) reinstating to previously ordered public service employment, (d) restructuring the supervision plan, (e) enhancing drug testing, (f) issuing a verbal reprimand, (g) enhancing supervision contacts, (h) issuing a written reprimand, and (i) placing in inpatient or outpatient treatment.

(3) Supervisor/hearing officer sanctions include, but are not limited to: (a) imposing any agent/case management option, (b) reinstating previously ordered weekend time, (c) modifying supervision level, (d) restructuring financial payments without changing total obligation, (e) implementing financial exemptions, (f) converting supervision fees to public service employment, (g) recommending civil judgment, (h) recommending extension of supervision (if applicable), (i) imposing new/additional public service employment, (j) imposing home detention, (k) imposing participation in electronic surveillance programs, (l) imposing additional special conditions of supervision, (m) requiring participation in community based programs, (n) recommending partial revocation of sentence (if applicable), and (o) recommending full revocation of sentence.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.