

DEPARTMENT OF CORRECTIONS TESTIMONY: RULE 74

Joint Legislative Justice Oversight Committee

November 5, 2021

Rule 74 allows for appeals of terminations (interruptions or revocation) of community supervision furlough for 90 days or longer for a technical violation of furlough conditions that does not constitute a new crime.

Background:

- 28 V.S.A. § 724 – passed 2019, effective January 1, 2021
- <https://legislature.vermont.gov/statutes/section/28/011/00724>

Ineligible case staffing decisions being appealed under Rule 74:

- Programming, classification and other non-furlough DOC decisions,
- Furlough denials,
- Furlough violations that involved new charges, and
- Furlough terminations that occurred prior to the enactment of the statute (1/1/21).

Major Problems:

- Incarcerated individuals are having a difficult time understanding the rules (28 V.S.A. § 724 and V.R.Civ.P. 74), despite DOC Rule 74 Clerk and Director of Legal Education providing guidance. As a result, Rule 74 appeals are being used for issues to which this statute is not meant to apply.
- Forms distributed to the incarcerated population from Prisoners' Rights Office (PRO) are sparse and do not provide all the information the courts need.
- Courts are inconsistent in the information they are seeking in considering Rule 74 appeals, leading to inconsistency throughout the system in what is filed and deemed necessary for a court to issue a ruling. Some courts are screening for ineligible appeals, others are not, and some are converting to a Rule 75 appeal.
- Courts are also split on following Rule 74 filing timelines.
- Rule 74 is being improperly used to appeal furlough terminations which occurred prior to the effective date of 28 V.S.A. § 724 (January 1, 2021).
- This is creating workload issues for Vermont DOC and for the Attorney General's Office; the first step in every case is discovery, regardless of the merits of the case or whether the appeal is properly filed by statute.
 - Numbers of cases: 50-60 active cases in Court, not including appeals filed to DOC Rule 74 Clerk that are still being processed.¹
 - Staff time:
 - DOC Rule 74 Clerk is a full-time position. This was a designation given to a DOC employee already working full time.
 - Probation and Parole officers are being taken offline to compile, organize and redact the agency record (which at times can consist of up to 400 pages).

¹ DOC Rule 74 Clerk receives on average 14 Rule 74 appeals per week, while DOC is terminating furlough for about five individuals meeting the criteria under 28 V.S.A. § 724 to file a Rule 74 appeal per week.

- Coordinating Webex hearings (in addition to criminal, family and other civil matters) within our correctional facilities once these matters are set will take up considerable facility staff time.
- DOC seeks explicit statutory clarification in the interest of judicial economy and to eliminate ineligible filings which have become an unnecessary workload for all parties involved. The judiciary has created the “Centralized Service Analyst” position in some courts to now handle Rule 74 appeals.

DOC is seeking:

- Clarity from the courts on what qualifies/is required for a Rule 74 appeal, and
- Consistency and accuracy in messaging from PRO that applies to statute only.

Suggested fixes:

- Court form should be provided by Judiciary (as opposed to PRO or Vermont DOC)
 - Would be a “Notice of Appeal” form
 - Includes attestation which outlines requirements: 90 days+, for furlough revocation (not case staffing), no new crimes committed
- Expand responsibility of DOC Rule 74 Clerk
 - Washington Superior Court is sending DOC Clerk everything filed by an incarcerated individual, which is the ideal practice; it eliminates steps and notifies people in a timely manner.
- 28 V.S.A. § 724 (c) to be amended to clarify: (a) appellant and appellee can introduce evidence and testimony for good cause shown. The language is unclear on that issue; and (b) the Rule 74 appeal is only available for an offender on community supervision furlough whose status was terminated for 90 days or longer on a technical violation after January 1, 2021.

Photo Exhibit:

Rule 74 appeals received by DOC between November 1 and November 3, 2021 (edited for privacy)

