

REGULATIONS GOVERNING CONDITIONAL RELEASE OF PRISONERS
Title 5, Marshall Islands Administrative Code
Regulation 501 et seq.
(5 MIAC 501 et seq.)

PART I - Authority, Purpose, Definitions and Uses

501. Authority.

These Regulations are made pursuant to the Public Safety Act 1988, 5 MIRC, Chapter 5 and the Criminal Code, 31 MIRC, Chapter 1. The Public Safety Act, §41, provides:

- (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.
- (2) In particular and without prejudice to the generality of the powers conferred by Subsection (1) of this Section, the Minister may make regulations for or with the respect to all or any of the following matters:

...
(e) the safe custody, management, organization, hours, mode and kind of labor and employment, clothes, maintenance, instruction, discipline, treatment [sic], restraint, correction, parole and discharge of prisoners;

- ...
(3) Notwithstanding the provisions of the Administrative Procedure Act 1979, regulations made under the provisions of this Act shall be valid and effective upon approval by the Cabinet.

The Criminal Code, §71, authorizes the Cabinet to issue pardons or parole, follows:

- (1) Any person convicted of a crime in the Republic may be pardoned or paroled by the Cabinet on such terms and conditions as it shall deem best.
- (2) Any person sentenced in the Republic to imprisonment for not more than six (6) months, or pay a fine of not more than \$100, or both, may be pardoned or paroled by the Cabinet, upon such terms and conditions as he [sic] deems best.

502. Purpose and Policy.

Allowing convicted criminals who have been incarcerated into the community is a danger to that community. The handling of prisoners requires the utmost care. However, it is a goal of the Republic to rehabilitate its prisoners and return them to the status of contributing members of society. Moreover, prisoners may contribute to society while serving their sentences, rather than continuing to be a burden on society.

These Regulations are intended to provide standards and guidelines for the safe custody, management, organization, hours mode and kind of labor and employment, clothes, maintenance, instruction, discipline, treatment, restraint, correction, parole and discharge of prisoners.

503. Definitions

(1) Commissioner. "Commissioner" means the Commissioner of Public Safety.

(2) Minister. As used in these Regulations, "Minister" shall refer to the Minister of Justice.

(3) Parole. "Parole" means the discretionary, conditional release from incarceration of a prisoner prior to the end of the maximum sentence imposed by the court.

(4) Probation. "Probation" means supervised, conditional release of a convicted offender, whether such release is following or in lieu of a term of imprisonment.

(5) Probation Officer. "Probation Officer" means an officer appointed by the Minister to perform the functions specified in the Public Safety Act, these Regulations, and any other relevant Acts or regulations. The Probation Officer shall have access to the prisons, prisoners, and all records relating to prisoners.

(6) Prisoner. "Prisoner" means anyone who has been sentenced to a term of imprisonment for the violation of any law, ordinance or act which allows or mandates a term of imprisonment, regardless of whether the act resulting in imprisonment is characterized as a crime, infraction, violation or otherwise.

(7) Public Benefit. "Public Benefit" means any activity which is intended to primarily serve the public, and not primarily to generate profits or revenues for private enterprise(s). Examples of Public Benefit include, but are not limited to, actions to collect garbage (public health benefit), actions to clear land for uses that will benefit the Republic,

and emergency actions to prevent damage during high tides or storm conditions (protection of persons and property).

(8) Superintendent of Prisons. "Superintendent" means the Superintendent of Prisons, as appointed in accordance with Section 26 of the Public Safety Act. The Superintendent shall have general supervision and control of all prisons. When there is no Superintendent, the Commissioner shall act as the Superintendent.

504. Use of Prisoner Labor.

(1) No Prisoner shall be forced to perform labor except the following:

- (a) Any Prisoner sentenced to a term at labor or hard labor;
- (b) Any Prisoner may be required to perform labor to ensure the sanitary condition, maintenance, and upkeep of the prison; and
- (c) Any Prisoner may be required to perform labor when an emergency is declared by the Government of the Republic of the Marshall Islands.

PART II - Duties and Reports

505. Duties of the Commissioner.

The Commissioner shall ensure that each party handling Prisoners is notified of these Regulations and agrees to abide by their terms.

506. Duties of the Superintendent of Prisons.

(1) It shall be the duty of the Superintendent to take every step and make every endeavor for the correction and rehabilitation of Prisoners.

(2) The Superintendent shall maintain individual records of all Prisoners who are sentenced to a term of imprisonment. The records shall record the Prisoner's conduct and behavior while incarcerated.

(3) The Superintendent shall insure that Prisoners are available for court appearances.

(4) The Superintendent shall maintain a list of all Prisoners who are eligible for conditional release. The list

shall be divided into three categories, as follows:

- (a) Category I: Prisoners who are approved, as provided in Regulation 508, infra, for limited unsupervised release, for purposes to include but not limited to continuing education or vocational training, or any activity approved for Category II Prisoners;
- (b) Category II: Prisoners who are approved, as provided in Regulation 508, infra, for limited release with constant supervision, to include but not limited to public benefit work projects, but excluding Category I training, projects or conditions of release;
- (c) Category III: Prisoners who are not approved for conditional release. Any Prisoner not recommended and approved for conditional release shall be placed in Category III.

(5) Prisoners may only be released for training, education, projects, or other conditional release as provided in these Regulations.

(6) The Superintendent shall determine the proper discipline and punishment of Prisoners for any violation of the rules of the prison, terms of release (except as provided herein), and these Regulations. An appeal of the determination of the Superintendent shall lie solely with the Minister, whose determination shall be final.

507. Duties of the Probation Officer.

(1) It shall be the duty of the Probation Officer to interview all Prisoners and take all reasonably possible steps to correct and rehabilitate them.

(2) It shall be the responsibility of the Probation Officer to make recommendations on the eligibility of Prisoners for conditional release for the following purposes:

- (a) parole;
- (b) education;
- (c) vocational training; or
- (d) community or public service programs.

508. Pre-Release Report.

(1) The Superintendent shall prepare a report on each Prisoner prior to his or her release from prison for any purpose. The report is to include at least:

- (a) the charges for which the Prisoner was incarcerated;

- (b) any prior convictions, including time sentenced and time served;
- (c) any infractions or violations of prison rules during the current period of incarceration;
- (d) any steps taken by the Prisoner to demonstrate rehabilitation, including but not limited to:
 - (i) continuing his or her education, either academic or vocational;
 - (ii) efforts at restitution to the victims of his or her crime(s), and whether such efforts were mandated by the court;
 - (iii) where appropriate, such as drug, alcohol, or sexual assault cases, efforts made to avoid recidivism;
 - (iv) work performed while incarcerated to facilitate the operation of the prison;
 - (v) continuing to maintain employment while incarcerated; and
 - (vi) work performed for Public Benefit.
- (e) The Superintendent shall recommend a category of conditional release, as provided above in Regulation 506(4), for each Prisoner.

(2) Prior to the release of any Prisoner for any of the purposes listed in Regulation 507(2), the report required in Subpart (1) of this Regulation shall be delivered to the Probation Officer, the Commissioner, the Attorney General, and the Minister for review and approval. If any of these four objects to the conditional release of a Prisoner, the Prisoner shall not be released.

- (a) If no comment is received within 10 days of delivery of the report, temporary releases for educational, vocational or public service projects may be deemed approved, unless subsequently specifically denied.
- (b) A Prisoner shall be placed in the most restrictive category for release recommended by the Probation Officer, the Commissioner, the Attorney General or the Minister.
- (c) No Prisoner shall be paroled without the express approval of the Cabinet.

(3) The form of the report shall conform substantially with the form appended to these Regulations as Appendix A.

PART III - Approval of Projects

509. Projects Which May Be Approved by the Superintendent.

(1) The Superintendent may conditionally release Prisoners to work on Public Benefit projects which the Superintendent finds meet all of the following requirements:

- (a) The project will provide a benefit to the general public which exceeds any benefit conferred on any private individual, business or other non-governmental entity;
- (b) The project proponent will provide adequate security to ensure the safety of the public and the continued custody of the Prisoners.
 - (i) The determination of the Superintendent as to adequate security is final and may not be appealed by any member of the public.
 - (ii) The Commissioner may allow off-duty police to accept employ as security for such purposes.
- (c) The project proponent shall provide at least one meal per Prisoner for every four hours of work or any portion thereof.
- (d) The project proponent shall provide all necessary equipment, including all safety equipment normally required, for the tasks to be performed.

(2) The project proponent may be required to deliver a signed acknowledgement of responsibility and indemnity agreement, in a form substantially in accord with the form attached as Appendix E, prior to the release of any Prisoners, at the discretion of the Attorney General.

(3) The Superintendent shall prepare a report of any project which the Superintendent has approved pursuant to this Regulation, detailing compliance with this Regulation and identifying the Category(s) of Prisoners to be so employed. The report shall be delivered to the Minister and the Attorney General no later than 48 hours before the commencement of the project. No Prisoners shall be released for the project if either the Minister or the Attorney General objects to the project.

- (a) The form of the report shall be conform substantially with the form appended to these Regulations as Appendix B.

510. Projects Which May Be Approved by the Minister.

(1) The Minister may authorize the Superintendent to conditionally release Prisoners to work on projects which the Minister finds meet all of the following requirements:

- (a) The project will provide a benefit to the general public which exceeds any benefit conferred on any private individual, business or other non-governmental entity;
 - (i) Projects may provide a Public Benefit through the provision of job training, vocational training, or educational opportunities, and
 - (ii) Prisoners who work for private enterprise shall be paid at least the minimum wage;
- (b) The project proponent will provide adequate security to ensure the safety of the public and the continued custody of the Prisoners.
 - (i) The determination of the Superintendent as to adequate security is final and may not be appealed by any member of the public.
 - (ii) The Commissioner may allow off-duty police to accept employ as security for such purposes.
- (c) The project proponent shall provide at least one meal per Prisoner for every four hours of work or any portion thereof.
- (d) The project proponent shall provide all necessary equipment, including all safety equipment normally required, for the tasks to be performed.

(2) The project proponent may be required to deliver a signed acknowledgement of responsibility and indemnity agreement, in a form substantially in accord with the form attached as Appendix E, prior to the release of any Prisoners, at the discretion of the Attorney General.

(3) A report of any project approved by the Minister pursuant to this Regulation shall be prepared by the Superintendent, detailing compliance with this Regulation and identifying the Category(s) of Prisoners to be so employed. The Report shall be delivered to the Cabinet and the Attorney General no later than 48 hours before the commencement of the project. No Prisoners shall be released for the project if either the Cabinet or the Attorney General objects to the project.

- (a) The form of the report shall be conform substantially with the form appended to these Regulations as Appendix C.

511. Projects Which May Be Approved by the Cabinet.

(1) The Cabinet may authorize the Superintendent to conditionally release Prisoners to work on projects which the Cabinet finds meet all of the following requirements:

- (a) The project will provide a Public Benefit through the provision of job training, vocational training, or educational opportunities to Prisoners while conferring a substantial benefit upon private individual(s), business(es) or other non-governmental entity(s);
 - (i) Projects may not employ Prisoners for vocational training if there are adequate numbers of available and qualified Marshallese citizens to perform the work.
- (b) The project proponent will provide adequate security to ensure the safety of the public and the continued custody of the Prisoners.
 - (i) The determination of the Superintendent as to adequate security is final and may not be appealed by any member of the public.
 - (ii) The Commissioner may allow off-duty police to accept employ as security for such purposes.
- (c) The project proponent shall provide at least one meal per Prisoner for every four hours of work or any portion thereof.
- (d) The project proponent shall provide all necessary equipment, including all safety equipment normally required, for the tasks to be performed.

(2) The project proponent may be required to deliver a signed acknowledgement of responsibility and indemnity agreement, in a form substantially in accord with the form attached as Appendix E, prior to the release of any Prisoners, at the discretion of the Attorney General. *Minister*

(3) A report of any project approved by the Cabinet pursuant to this Regulation, detailing compliance with this Regulation and identifying the Category(s) of Prisoners to be so employed, shall be prepared by the Superintendent and delivered to the Minister and the Attorney General no later than 48 hours before the commencement of the project. If either the Minister or the Attorney General objects to the any specific Prisoners inclusion in the project, such Prisoner shall not be released.

- (a) The form of the report shall be conform substantially with the form appended to these Regulations as Appendix D.

512. Emergency Response Actions.

(1) The Superintendent may release work crews for emergency actions. Such crews shall be composed only of those prisoners previously approved for release by the Minister and the Attorney General. Emergencies are only those declared by the National Government, the various local governments, or directly threatening a place in which the Prisoners are incarcerated.

(2) The Superintendent shall send a report of any emergency action undertaken to the Minister and the Attorney General as soon as possible after the emergency, but in no case more than two weeks after the emergency action.

(a) The Report shall be in the form provided in Appendix B.

PART IV - PAROLE; CREDIT FOR TIME SERVED AND REHABILITATION

513. Calculation of Time For Parole.

The Superintendent and the Probation Officer may recommend the parole of Prisoners to the Minister on such terms and conditions as the Superintendent, the Probation Officer and the Minister deem appropriate. No Prisoner shall be recommended for parole until he or she has served at least one half of the minimum sentence imposed by the court. The Superintendent and the Probation Officer shall use the following criteria for the calculation of time served and in recommending parole, pardon or other conditional release:

(1) For each day spent working on public benefit projects, the Prisoner shall be entitled to one (1) day extra credit toward the time served;

(2) For each day spent working on at vocational training, the Prisoner shall be entitled to one half ($\frac{1}{2}$) day extra credit toward the time served;

(3) For each day spent working for private enterprise or for wage compensation, the Prisoner shall be entitled to one half ($\frac{1}{2}$) day extra credit toward the time served;

(4) For each educational credit received towards a high school diploma or the equivalent thereof, the Prisoner shall be entitled to one week (7 days) extra credit toward the time served;

(5) For each educational credit received towards a college degree or the equivalent thereof, the Prisoner shall be entitled

to two weeks (14 days) extra credit toward the time served.

The criteria listed in this Regulation, Subparts (1) through (5), are solely for the purpose of parole, pardon, or conditional release; such credits do not reduce the term of a sentence imposed by a court, or create a right to early release.

514. Approval of Recommendation for Parole.

For any Prisoner parole may be granted by the Cabinet on the recommendation of the Minister in consultation with the Attorney General, the Probation Officer and the Superintendent of Prisons, in accordance with the sentence imposed by the court and these Regulations.

PART V - Release, Compliance with Law, Violation of Terms

515. No Right to Conditional Release or Parole.

Nothing in these Regulations is intended to or shall provide or grant any right to release or parole to any Prisoner. Any recommendation or approval of parole or conditional release, as provided in these regulations, is discretionary with the Superintendent, the Probation Officer, the Attorney General, the Minister and the Cabinet.

516. Release From Prison.

(1) Prior to the release of any Prisoner, for work release, public project work, vocational training, continuing education, probation or parole, the Superintendent shall certify compliance with all of the requirements of the Public Safety Act, the Criminal Code and these Regulations. Checklists appropriate to the type of release involved are appended to these regulations (Appendices A - D). Any checklist so used shall be retained in the Prisoner's file or the Superintendent's general files, and be available to inspection by the Minister or the Attorney General.

517. Release for Education, Vocational Training or Employment.

Prior to the release of any prisoner for educational, vocational training or employment release, the responsible officials at the place of education, training or employment shall sign an acknowledgement of the Prisoner's terms of release, and agree to provide information to the Superintendent regarding the Prisoner's performance, attendance and such other information as the Superintendent may request. A form of acknowledgement is

attached to these Regulations as Appendix F.

518. Violation of Terms of Release.

(1) Any violation of terms of release shall result in the Prisoner's return to custody and incarceration pending a determination of the Prisoner's eligibility for continued or modified terms of release.

(2) Any violation by a Prisoner of the terms of release, prison rules, or disobedience of the lawful orders of those in custody of the Prisoner shall result in the termination of the Prisoner's eligibility for release and removal of the Prisoner's name from the list of Prisoners eligible for conditional release pending a determination of the propriety of continued release.

(3) Any attempt to escape or the commission of any offense while on temporary release shall result in the immediate removal of the Prisoner from all release programs for a minimum of three (3) months.

(a) A Prisoner who has attempted escape or committed any offense while on conditional release may not be returned to the list of Prisoners eligible for release without the express approval of the Attorney General and the Minister.

519. Effect on Prior Regulations.

(1) To the extent any prior regulations conflict with these Regulations, the prior regulations are superseded and are null and void.

(2) To the extent the any prior regulations cover any matter not covered herein, and such regulations are compatible with these Regulations, the prior regulations remain in full force and effect.

APPENDIX A
PRE-RELEASE REPORT

1. Prisoner's Name: _____
(1) Age: _____
(2) Sex: _____

2. Purpose of Report (check appropriate items):
____ (1) Work-Release;
 ____ (a) Public Benefit:
 ____ (b) Private Enterprise:
____ (2) Vocational Training
____ (3) Continuing Education
____ (4) Probation
____ (5) Parole

3. Current Offense(s): _____
(1) Sentence(s): _____
(2) Time Served (Actual): _____
 (a) Time Credits (attach worksheet): _____
(3) Total Time credited: _____
(4) Infractions/Violations of Laws/Prison Rules: _____

4. Prior Offense(s): _____
(1) Sentence(s): _____
(2) Time Served: _____
 (a) Paroled: (yes/no)
 (b) Probation: (yes/no)
 (i) Terms of Prior Probation: _____

5. Prisoner's Rehabilitation:
(1) Continuing Education:
 (a) Academic: _____
 (b) Vocational: _____
(2) Restitution: _____
 (a) Compliance with court mandated restitution:
 (yes/no)
(3) Training on Drug or Alcohol Abuse: (yes/no/NA)
(4) Training on Sexual Assault/Abuse: (yes/no/NA)
(5) Prison Work Performed: _____
(6) Continued Employment: _____
(7) Public Benefit Work: _____

APPENDIX A
PRE-RELEASE REPORT

6. Previous Releases: _____
(1) Purposes: _____
(2) Violations of Terms of Release: _____

7. Recommendation of Probation Officer (include special terms, if any):
(1) Parole: _____
(2) Probation: _____
(3) Education: _____
(4) Vocational Training: _____
(5) Public Service Program: _____

8. The Superintendent recommends: _____

Dated: _____

Superintendent

9. Circulation of Report:
Sent to: Date Sent: By Whom: Response Rec'd:

Probation Officer:

Commissioner:

Att'y General:

Minister:

If any of these three objects to the conditional release of a Prisoner, the Prisoner shall not be released. If no comment is received within 30 days of delivery of the report, temporary releases for educational, vocational or public service projects may be deemed approved. No Prisoner shall be paroled without the express approval of the Minister or the Cabinet, as provided in the Regulations.

APPENDIX B
SUPERINTENDENT PROJECT APPROVAL

1. Project Proponent(s) [Name(s)]: _____
2. Project Name (or Description): _____
3. Description of Public Benefit: _____
4. Security Arrangements: _____
5. Provision of Meals: (yes/no)
6. Provision of Equipment: (yes/no)
(1) Safety Equipment Required: (yes/no)
7. Category(s) of Prisoners to Be Employed: _____
(1) All Prisoners to be employed have been pre-approved for release? (yes/no)
8. Acknowledgement of Responsibility or Indemnity required? (yes/no)
9. Approved by Superintendent:
Date: _____

Superintendent

10. Circulation of Report:
Sent to: Date Sent: By Whom: Response Rec'd:

Att'y General:

Minister:

The report shall be delivered to the Minister and the Attorney General no later than 48 hours before the commencement of the project. No Prisoners shall be released for the project if either the Minister or the Attorney General objects to the project.

APPENDIX C
MINISTER PROJECT APPROVAL

1. Project Proponent(s) [Name(s)]: _____
2. Project Name (or Description): _____
3. Description of Public Benefit: _____
4. Security Arrangements: _____
5. Provision of Meals: (yes/no)
6. Provision of Equipment: (yes/no)
(1) Safety Equipment Required: (yes/no)
7. Category(s) of Prisoners to Be Employed: _____
(1) All Prisoners to be employed have been pre-
approved for release? (yes/no)
8. Compensation to Be Provided to Prisoners (if applicable): _____
9. Acknowledgement of Responsibility or Indemnity required?
(yes/no)
10. Approved by Minister:
Date: _____
Minister
11. Prepared by Superintendent:
Date: _____
Superintendent
12. Circulation of Report:

<u>Sent to:</u>	<u>Date Sent:</u>	<u>By Whom:</u>	<u>Response Rec'd:</u>
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Att'y General:

Minister:

The report shall be delivered to the Cabinet and the Attorney General no later than 48 hours before the commencement of the project. No Prisoners shall be released for the project if either the Minister or the Attorney General objects to the project.

APPENDIX D
CABINET PROJECT APPROVAL

1. Project Proponent(s) [Name(s)]: _____
2. Project Name (or Description): _____
3. Description of Public Benefit: _____
(1) If providing job training, verification that inadequate numbers of marshalllese citizens are available (yes/no)
4. Security Arrangements: _____
5. Provision of Meals: (yes/no)
6. Provision of Equipment: (yes/no)
(1) Safety Equipment Required: (yes/no)
7. Category(s) of Prisoners to Be Employed: _____
(1) All Prisoners to be employed have been pre-approved for release? (yes/no)
8. Compensation to Be Provided to Prisoners (if applicable): _____
9. Acknowledgement of Responsibility or Indemnity required? (yes/no)
10. Approved by the Cabinet:
Date: _____
Clerk of the Cabinet
11. Prepared by Superintendent:
Date: _____
Superintendent
12. Circulation of Report:
Sent to: Date Sent: By Whom: Response Rec'd:
Att'y General:

Minister:

The report of any project approved by the Cabinet shall be prepared by the Superintendent and delivered to the Minister and the Attorney General not later than 48 hours before the commencement of the project. If either the Minister or the Attorney General objects to any specific Prisoner's inclusion in the project, such Prisoner shall not be released.

APPENDIX E
ACKNOWLEDGEMENT OF RESPONSIBILITY
AND INDEMNITY

ACKNOWLEDGEMENT

The care and custody of Prisoners is a matter of grave importance to the Republic, with consequences affecting the public safety. Any person entrusted with the care and custody of Prisoners assumes the responsibility of the Republic both to protect the Prisoners from harm and to ensure that the Prisoners remain in custody and commit no further offenses. By accepting custody of the(se) Prisoner(s), the undersigned acknowledges both the gravity of the obligation and the accepts the responsibility to maintain care and custody of the Prisoner(s).

(Signature)

(Name/Title)

INDEMNITY

Agreement made this _____ day of _____, 199____, between the Republic of the Marshall Islands ("Republic") (P.O. Box 2, Majuro, MH 96960) and _____, a person/corporation/association/partnership/government agency (cross out inappropriate items)("Indemnitor") (P.O. Box _____, _____, MH 96960). The Republic, in return for this indemnity and other promises, agrees to release _____ prisoners to the temporary and conditional custody of Indemnitor. Indemnitor, in return for the temporary and conditional release of the prisoners to his/her/its custody, agrees to indemnify the Republic from any and all liability, loss, or damage the Republic may suffer as a result of claims, demands, costs, or judgments against it arising from Indemnitor's custody of the prisoners, including any claims of prisoners and third parties.

This Agreement shall commence on the date of this Agreement, and is limited to the period beginning when the Indemnitor accepts custody of the prisoners until such time as the prisoners are returned to the custody of the Republic, and all claims arising from such custody, regardless of when such claims are presented.

The Republic agrees to notify Indemnitor in writing, within 10 days, by registered mail, at Indemnitor's address as stated above, of any claim made against the Republic on the obligations indemnified against.

In witness whereof, the parties have executed this Agreement
at _____, _____, on the day and year first above
written.

(Signature)

(Signature)

(Name and Title)

(Name and Title)

APPENDIX F
ACKNOWLEDGEMENT OF RESPONSIBILITY

The care and custody of Prisoners is a matter of grave importance to the Republic, with consequences affecting the public safety. Any person entrusted with the care and custody of Prisoners assumes the responsibility of the Republic both to protect the Prisoners from harm and to ensure that the Prisoners remain in custody and commit no further offenses. By accepting custody of the(se) Prisoner(s), the undersigned acknowledges both the gravity of the obligation and the accepts the responsibility to maintain care and custody of the Prisoner(s).

The undersigned also agrees to cooperate fully with the public officials charged with the custody of the(se) Prisoner(s), and will provide information to the officials on the whereabouts, activities, progress or problems associated with the Prisoner(s) as requested by officials of the Republic.

(Signature)

(Name/Title)