

CHAPTER 19: TEMPORARY RELEASE*

A. INTRODUCTION

A furlough is a temporary release that allows a prisoner to leave the prison for a limited amount of time. In Louisiana, it is possible to get furloughs for medical reasons.¹ It may also be possible for you to join a work release program. Remember: not every institution offers every program. Whether the program is available to you depends on your institution.

Temporary release is a privilege.² If you are on temporary release from prison, you do not have a reasonable expectation of privacy. Law enforcement officers do not have to show probable cause to search you.³ Even though you are not in prison, you are still technically in the custody of the state. This is called “constructive custody.”⁴ Furthermore, the authorities can cancel your furlough at any time.⁵

Part B of this chapter explains the basic types of temporary release programs. Part C will explain how you can be eligible for these programs. Part D will explain the procedure for challenging a decision regarding your furlough status.

B. OVERVIEW OF TEMPORARY RELEASE PROGRAMS

As described in Chapter 39 of the main *Jailhouse Lawyer’s Manual (JLM)*, not all facilities offer the same temporary release programs. You should check with your institution to see what kinds of programs are offered and what you must do to participate. This can depend on your parish, because sheriffs of different parishes can create different rules regarding these programs.⁶ The two general types of programs offered in Louisiana are furloughs and work release. It can be difficult to get into these programs. There are no public statistics for Louisiana, but Chapter 39 of the main *JLM* records the statistics for admission rates to temporary release programs in New York.

1. Furloughs

Now, furloughs are only available for medical reasons.⁷ It allows you to maintain contact with your family during your sentence.⁸

a. Medical Furloughs

The secretary may authorize your temporary release for medical care in certain situations.⁹ You may be eligible for this type of release if you have a terminal illness and are expected to die within sixty days. You may also be eligible if you have a condition that prevents mobility and requires an acute care hospital or nursing facility. Such types of conditions include, but are not limited to, a prolonged coma or mechanical ventilation (breathing).¹⁰ Inmates sentenced to death are not eligible for medical furloughs.¹¹ If you are furloughed, you will be released to a medical facility for treatment.

* This Supplement Chapter was written by Sean Nelson.

¹ LA. REV. STAT ANN. § 15:833(B)(1) (2017) (“The secretary [of the Department of Public Safety and Corrections] may . . . authorize furloughs to deserving inmates of any adult correctional institution.”).

² See, e.g. *James v. Hertzog*, 415 Fed. App’x. 530 (5th Cir. 2011) (inmate lost an appeal of his denial of request to participate in a work release program due to his behavior; the court noted that furloughs are a privilege, not a right or entitlement belonging to a prisoner).

³ *State v. Williams*, 490 So. 2d 255, 260 (La. 1986) (citing *State v. Patrick*, 381 So. 2d 501, 503 (La. 1980)).

⁴ *State v. Williams*, 490 So. 2d 255, 260 (La. 1986).

⁵ *State v. Williams*, 490 So. 2d 255, 260 (La. 1986).

⁶ LA. REV. STAT ANN. § 15:711 (A), (B) (2017).

⁷ On May 20, 2011, LA. ADMIN. CODE tit. 22 § 305(I), providing for non-medical furloughs, was repealed.

⁸ LA. REV. STAT ANN. §§ 15:811, 15:833(B)(1) (2017) (The “furlough is intended to serve as a rehabilitation tool to assist the inmate in maintaining family relationships during the period of his incarceration.”).

⁹ LA. REV. STAT ANN. § 15:833.2(A) (2017).

¹⁰ LA. REV. STAT ANN. § 15:833.2(A) (2017).

If an inmate is released from the acute care facility or refuses further treatment, the furlough will be immediately terminated.¹²

b. Non-Medical Furloughs

Although Louisiana statutory law permits the Department of Corrections to enact policies permitting non-medical furloughs, no regulations currently provide for these temporary releases.¹³ For this reason, non-medical furloughs are no longer available.

2. Work Release

The sheriff of each parish has the power to start and run a work release program for his jurisdiction.¹⁴ If an inmate's sentence says that he cannot participate in work release, he is not eligible for the program.¹⁵ Beyond this, the sheriff establishes written rules.¹⁶ If an inmate violates the sheriff's rules or conditions, the inmate's work release privileges may be revoked.¹⁷ If you are approved for work release, you may be placed at universities, colleges, technical, vocational, or trade schools, or in sheltered workshops or training programs designed to improve your skills and work abilities.¹⁸

If you are approved for work placement, then you will be responsible for the cost of your room, board, clothing, and other related expenses.¹⁹ The sheriff or your designated agent will collect your salary and place it in a bank.²⁰ The money that you make will be used to pay off the following expenses, in the following order: (1) your board, food, clothing, and medical expenses; (2) necessary travel expenses to and from work as well as your other incidental expenses; (3) support of your dependents if you have any; (4) payment of any credit judgments against you; and (5) to you at the end of your sentence.²¹ You will make the same salary as non-work release employees who perform similar work.²² Finally, you will not be allowed to travel out of state unless your program employs you in an industry off the coast of Louisiana.²³

a. Jefferson Davis Work Release Program

In addition to those work release programs authorized in each parish, there is a separate work release program created under Louisiana law for the Jefferson Davis parish. The sheriff of Jefferson Davis parish is authorized to establish a work release program for inmates in his jurisdiction who have been convicted of misdemeanors.²⁴ The Jefferson Davis sheriff is responsible for establishing the written rules for this program.²⁵ These rules may determine, among other things, (1) who is eligible to participate in the work release program, (2) conditions to be observed while released, (3) the use of the money earned, and (4) the reduction of one's sentence for participating in the program.²⁶ Diminution (the reduction of your

¹¹ LA. REV. STAT. ANN. § 15:833.2(A) (2017).

¹² LA. REV. STAT. ANN. § 15:833.2(C) (2017) ("Any inmate authorized for temporary release pursuant to the provisions of this Section who is released, discharged, or who absconds from an acute care hospital or nursing home shall have such temporary release immediately rescinded.").

¹³ LA. REV. STAT. ANN. § 15:833(B)(1) (2017) ("The secretary [of the Department of Public Safety and Corrections] may . . . authorize furloughs to deserving inmates of any adult correctional institution.").

¹⁴ LA. REV. STAT. ANN. § 15:711(A) (2017). If the inmate is incarcerated at a facility not operated by the sheriff, the superintendent of the facility has the power to authorize a work release program.

¹⁵ LA. REV. STAT. ANN. § 15:711(B) (2017).

¹⁶ LA. REV. STAT. ANN. § 15:711(B) (2017).

¹⁷ LA. REV. STAT. ANN. § 15:711(B) (2017).

¹⁸ LA. REV. STAT. ANN. § 15:711(B) (2017).

¹⁹ LA. REV. STAT. ANN. § 15:711(C) (2017).

²⁰ LA. REV. STAT. ANN. § 15:711(D) (2017).

²¹ LA. REV. STAT. ANN. § 15:711(E) (2017).

²² LA. REV. STAT. ANN. § 15:711(F) (2017).

²³ LA. REV. STAT. ANN. § 15:711(H) (2017).

²⁴ LA. REV. STAT. ANN. § 15:711(A) (2017).

²⁵ LA. REV. STAT. ANN. § 15:711(A) (2017).

²⁶ LA. REV. STAT. ANN. § 15:711(A) (2017).

sentence) is only allowed if you spend each night in jail and cannot exceed one and one-third days of credit for each day served in the work release program.²⁷

b. Disaster Provision

There is also a special type of work release under Louisiana law for responding to state emergencies.²⁸ The Secretary of the Department of Public Safety and Corrections is authorized to establish community resource centers to provide housing for inmates so that they may clean up the damage caused by a natural disaster or emergency.²⁹ You may be assigned to perform labor related to cleanup and rebuilding after a natural disaster, emergency, or other catastrophe if the following requirements are satisfied:³⁰

- 1) The governor has declared a disaster or emergency in the parish where the work is to be performed, either by executive order or a proclamation under the Louisiana Homeland Security and Emergency Assistance Disaster Act;³¹
- 2) The secretary has approved your participation in disaster cleanup and rebuilding activities;³² and
- 3) You are eligible for participation according to the rules/regulations put forth by the secretary and you have not been convicted of a crime of violence or certain sexual offenses.³³

C. ELIGIBILITY REQUIREMENTS

1. Furloughs

a. Medical Furloughs

The secretary may allow the temporary release of a prisoner for palliative (treatment to reduce the pain but not cure the illness) or medical care when (1) the prisoner has been diagnosed with a terminal illness and death is expected within sixty days OR (2) when the prisoner has a condition that totally prevents mobility (such as a prolonged coma or the need for mechanical ventilation) and is to be confined to an acute care hospital (typically a short-term facility) or nursing home.³⁴

Neither type of medical furlough is available to prisoners sentenced to death.³⁵ Additionally, the second kind of temporary release (for immobile prisoners confined to acute care hospitals or nursing homes) is not available to those serving a sentence for first degree murder, second degree murder, attempted murder, aggravated rape, attempted aggravated rape, forcible rape, aggravated kidnapping, aggravated arson, armed robbery, attempted armed robbery, a habitual felony conviction under R.S. 15:529.1,³⁶ or one of the following drug offenses: producing, manufacturing, distributing or dispensing or possession with intent to produce, manufacture, distribute or dispense a Schedule I or II controlled dangerous substance (under R.S. 40:964).³⁷ If you are granted this second type of medical furlough and you are later released or discharged from the acute care hospital or nursing home, your temporary release will immediately be cancelled.³⁸ If you flee from the acute care hospital or nursing home or if you refuse further treatment at the care facility, your temporary release will immediately be cancelled.³⁹

²⁷ LA. REV. STAT. ANN. § 15:711(A) (2017).

²⁸ LA. REV. STAT. ANN. § 15:833.1(A) (2017).

²⁹ LA. REV. STAT. ANN. § 15:833.1(A) (2017).

³⁰ LA. REV. STAT. ANN. § 15:833.1(B) (2017).

³¹ LA. REV. STAT. ANN. § 15:833.1(B)(1) (2017).

³² LA. REV. STAT. ANN. § 15:833.1(B)(3) (2017).

³³ LA. REV. STAT. ANN. § 15:833.1(C) (2017).

³⁴ LA. REV. STAT. ANN. § 15:833.2(A) (2017).

³⁵ LA. REV. STAT. ANN. § 15:833.2(A) (2017).

³⁶ LA. REV. STAT. ANN. § 15:833.2(B) (2017). R.S. (Revised Statute) § 15.529.1 is a Louisiana law that details sentences for repeat offenders.

³⁷ LA. REV. STAT. ANN. § 15:833.2(B) (2017). LA. REV. STAT. ANN § 40:694 is a Louisiana law that lists the names of various drugs.

³⁸ LA. REV. STAT. ANN. § 15:833.2(C) (2017).

³⁹ LA. REV. STAT. ANN. § 15:833.2(C) (2017).

2. Work Release

To be able to participate in a work release program, you must meet your department's standards for work release and get written approval from the secretary of your department.⁴⁰ If you violate the conditions of the sheriff, your work release privileges may be taken away.⁴¹ If you fail to report or fail to return from your planned employment, that failure will be considered an escape under R.S. 14:110.⁴²

If you have been convicted of forcible rape, aggravated arson, armed robbery, attempted murder, attempted armed robbery, or sentenced as a habitual offender under R.S. 15:529.1,⁴³ then you are only eligible for work release during the last *six months* of your term.⁴⁴ There is an exception, however. Unless you are already eligible at an earlier date, if you have served for a minimum of fifteen years for one of these crimes, then you may participate in a work release program during the last *twelve months* of your term.⁴⁵

Additionally, if you have been convicted of producing, manufacturing, distributing, dispensing, or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance classified in R.S. 40:964,⁴⁶ then you are still eligible for work release if you observe the other work release standards.⁴⁷

Because work release is a privilege rather than a right, you do not have a legal claim to it (if something is a right, you are always guaranteed it from birth. If it is a privilege, it can be taken away from you).⁴⁸ The sheriff of each parish runs the program and decides who may participate.⁴⁹ Even if you are qualified for work release, you have no legal right to be granted it and cannot challenge denial of it on the ground that you were legally eligible for it. For example, if you do not believe that you were given a fair opportunity to defend yourself against allegations of bad behavior and this is why the sheriff denied you work release, you cannot challenge his decision.⁵⁰ There may be an exception to this, however. If you *are* a member of a *protected class* (that is, you are a member of a minority race, religion, ethnicity, sexual orientation, are physically disabled, etc.), you could potentially bring a claim under the Equal Protection Clause of the United States Constitution.⁵¹

You are not qualified for a disaster relief work release if you have been convicted of a crime of violence, as defined in R.S. 14:2(B)⁵² or if you have been convicted of a sex offense as defined in R.S. 15:541.⁵³ If you participate in this type of work release, you will be able to earn thirty days of good time in addition to that otherwise authorized by law for every thirty days you serve in the program.⁵⁴

⁴⁰ LA. REV. STAT. ANN. § 15:711(B) (2017).

⁴¹ LA. REV. STAT. ANN. § 15:711(B) (2017).

⁴² LA. REV. STAT. ANN. § 15:711(2017). R.S. (Revised Statute) § 14:110 is a Louisiana law that details the meaning of escape.

⁴³ LA. REV. STAT. ANN. § 15:711(G)(1) (2017).

⁴⁴ LA. REV. STAT. ANN. § 15:711(G)(1) (2017).

⁴⁵ LA. REV. STAT. ANN. § 15:711(G)(1) (2017).

⁴⁶ LA. REV. STAT. ANN. § 40:964 (2017). R.S. (Revised Statute) 40:964 is a Louisiana law that lists the names of various drugs.

⁴⁷ LA. REV. STAT. ANN. § 15:711(G)(2) (2017).

⁴⁸ James v. Herzog, 415 Fed. App'x. 530, 532 (5th Cir. 2011) (quoting Bulger v. United States Bureau of Prisons, 65 F.3d 48, 50 (1995) (denying an equal protection claim of a gay prisoner who was denied work release privileges because homosexuals are not a protected class of citizens).

⁴⁹ LA. REV. STAT. ANN. § 15:711(A), (B) (2017).

⁵⁰ James v. Herzog, 415 Fed. App'x. 530, 532 (5th Cir. 2011).

⁵¹ For more details on claims alleging a violation of equal protection, please see Chapter 8 of this Supplement or Chapter 16 of the main *Jailhouse Lawyer's Manual*.

⁵² LA. REV. STAT. ANN. § 14:2 (B) (2017).

⁵³ LA. REV. STAT. ANN. § 15:541 (2017).

⁵⁴ LA. REV. STAT. ANN. § 15:833.1(E) (2017).

D. CHALLENGING A FURLOUGH DECISION

The sheriff or supervisor of your institution almost exclusively decides whether to grant your work release or furlough (in other words, it is the sheriff or supervisor's decision and no one else's).⁵⁵ Your ability to challenge the sheriff's decision is limited as well. The 5th Circuit Court of Appeals has determined that failure to grant a prisoner work release privileges does not constitute "cruel and unusual punishment" under the Eighth Amendment.⁵⁶ Furthermore, because the law grants only the sheriff the decision whether or not to provide work release, prisoners are generally not guaranteed a right to challenge the justifications (bad behavior, etc.) on which denial has been based as a matter of due process.⁵⁷ And although a law may in some cases imply that you are eligible for work release programs, if the law does not say anything specifically regarding approval, it fails to create a liberty interest to serve as the basis of a due process violation (in other words, it must be clear from the law that you have the ability to challenge the decision).⁵⁸ While there are a few grounds to challenge denial that will be mentioned in the next paragraph, it is important that you do not challenge a denial of work release privileges without a good reason. If the federal court decides that the complaint or appeal is not well-reasoned, this will count as a "strike" for the purposes of 28 U.S.C. § 1915(g),⁵⁹ which limits the number of poorly-reasoned challenges a prisoner can bring while in prison.⁶⁰

Although it is difficult to challenge denial of a furlough decision, there are two cases in which courts have suggested it may be a possibility. First, plaintiffs in § 1983 claims can claim that a state actor intentionally discriminated against him because he was a member of a *protected class*.⁶¹ Additional details on this type of claim can be seen in Chapter 6 of the *Louisiana State Supplement* and Chapter 16 of the main *JLM*. Additionally, the Federal Court of Appeals for the Fifth Circuit has ruled that a correction authority's failure to follow its own procedures in rejecting an application for work release could be the basis for a claim for relief.⁶² If it can be shown that the sheriff or superintendent disregarded official procedures in denying your application for work release, the basis for a due process claim may exist. This may be difficult to show in Louisiana, however, as the language in the statute is vague and gives the sheriff or superintendent more power to make that decision than prisoners.⁶³

E. CONCLUSION

Under very limited circumstances, you may be eligible for furlough, or temporary release from prison. The secretary of the Department of Public Safety and Corrections may grant you medical furlough if you have been diagnosed with a terminal illness and are expected to die within sixty days. The secretary may also grant you medical furlough if you suffer from a medical condition which causes you to be completely immobile.

You may be granted temporary work release if 1) your facility offers work release; 2) you meet the criteria set forth by state law and your facility; and 3) you obtain written approval from the secretary of the Department of Public Safety and Corrections. Furlough, especially work release, is a privilege, not a right. Your ability to challenge a denial or revocation of work release is extremely limited. However, you may be able to challenge a denial of work release if the sheriff or superintendent of your facility did not

⁵⁵ LA. REV. STAT. ANN. § 15:711(A), (B) (2017). ("Each sheriff . . . shall determine those inmates who may participate in the release program, except that no inmate may participate in the program if his sentence so stipulates.")

⁵⁶ James v. Herzog, 415 Fed. App'x. 530, 533 (5th Cir. 2011).

⁵⁷ James v. Herzog, 415 Fed. App'x. 530, 532 (5th Cir. 2011) (citing Meachum v. Fano, 427 U.S. 215, 226–229 (1976)).

⁵⁸ Welch v. Thompson, 20 F.3d 636, 643 (5th Cir. 1994); see also Ard v. Leblanc, 404 Fed. App'x. 928, 929 (5th Cir.

2010) (quoting Rublee v. Fleming, 160 F.3d 213, 217 (5th Cir. 1988)) ("A protected liberty interest exists only when a [statute] or regulation uses mandatory language to place a substantive limit on official discretion.")

⁵⁹ James v. Herzog, 415 Fed. App'x. 530, 533 (5th Cir. 2011).

⁶⁰ 28 U.S.C. § 1915(g) (2012) states that an inmate may not bring a civil action or appeal under the section if the prisoner has, on 3 or more prior instances while incarcerated, had civil actions or appeals dismissed as frivolous, malicious or for failure to state a claim, unless the prisoner is in imminent danger.

⁶¹ James v. Herzog, 415 Fed. App'x. 530, 532 (5th Cir. 2011).

⁶² Finley v. Staton, 542 F.2d 250 (5th Cir. 1976). (It is important to note that this case involved Alabama laws and procedures and was decided by the Fifth Circuit prior to its split.)

⁶³ LA. REV. STAT. ANN. § 15:711(B) (2017).

follow official procedures when denying your application. You may also be able to challenge a denial of work release if you are a member of a protected class and your denial was based on intentional discrimination. *See* Chapter 6 of the *Louisiana State Supplement* and Chapter 16 of the main *JLM* for more information on bringing a claim based on intentional discrimination.