

current offense or if the total score from Items A–F is 10.

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Special Instructions—Federal Probation Violators

Item G Use the age at commencement of the probation violation, not the original offense.

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Special Instructions—Federal Parole Violators

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Item G Use the age at commencement of the new criminal/parole violation behavior.

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Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

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Item G Use the age at commencement of the confinement/escape status violation.

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Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95-19312 Filed 8-4-95; 8:45 am]

BILLING CODE 4410-01-P

28 CFR Part 2

Designation of a Commissioner To Act as a Hearing Examiner

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending 28 CFR § 2.59 by replacing it with a regulation which allows the Chairman of the Parole Commission to designate any Commissioner to serve as a hearing examiner. The deleted regulation concerned the authority of a Regional Commissioner to exercise the functions of a hearing examiner in the absence of a hearing examiner. Designation of a Commissioner to serve as a hearing examiner will be made with the Commissioner's consent for specified hearing dockets. A

Commissioner who serves as a hearing examiner will not vote in the same proceeding as a Commissioner. This amendment replaces an obsolete rule with a regulation that permits the agency to use more of its resources to accomplish its mission.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: This new rule provides explicit authority in the

Commission's regulations for the Parole Commission's Chairman to designate a Parole Commissioner to act as a hearing examiner and thereby assist the Commission in balancing its workload as the Commission nears the end of its existence on November 1, 1997. See 18 U.S.C. 4204(a)(3) (authorizing the Chairman to assign duties among agency staff and Commissioners so as to balance the workload and provide for orderly administration). Such designations will be made for specified hearing dockets, and only with the designated Commissioner's consent.

If a Commissioner acts as a hearing examiner in a parole proceeding, the rule provides that the Commissioner will be disqualified from voting in the case as a Commissioner during the course of the same proceeding. This includes voting on an appeal filed by the prisoner or parolee to the National Appeals Board under 28 CFR 2.26, or the full Commission under 28 CFR 2.27. This important limitation preserves the distinction in function between the hearing examiner and the Parole Commissioner in making release and revocation decisions, and ensures that appropriate checks and balances are maintained in the agency's decisionmaking.

The Commission has decided to place this regulation at 28 CFR 2.59, which has been occupied by a rule which allows a Regional Commissioner to exercise the authority of a hearing examiner only in the absence of an examiner. This regulation has been rarely used by the Commission, and the agency determined that it should be removed as obsolete.

Implementation

This rule may be utilized for any hearings scheduled on or after October 2, 1995.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, and the rule, has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.59 is revised to read as follows:

§ 2.59 Designation of a Commissioner to act as a hearing examiner.

The Chairman may designate a Commissioner, with the Commissioner's consent, to serve as a hearing examiner on specified hearing dockets. The Commissioner who serves as a hearing examiner may not vote in the same proceeding as a Commissioner.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95-19313 Filed 8-4-95; 8:45 am]

BILLING CODE 4410-01-P

28 CFR Part 2

Parole Date Advancements for Substance Abuse Treatment Program Completion

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending 28 CFR 2.60 to permit a prisoner to be considered for a special advancement of his presumptive release date, by up to twelve months, if the prisoner is a non-violent offender who has completed a treatment program for a recognized problem of substance abuse. Although 28 CFR 2.60 already sets forth a schedule of permissible advancements for superior program achievement, the Commission is adding the above-described provision in order to provide to parole-eligible prisoners an incentive to complete the treatment program that is comparable to the incentive under 18 U.S.C. 3621(e)(2) that will be available from the Bureau of Prisons for federal prisoners serving sentences for crimes committed after November 1, 1987.

DATES: Effective Date: October 2, 1995. Comments must be submitted by October 31, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT:
Pamela A. Posch, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The rationale for this amendment of the Commission's policy of rewarding superior program achievement is described in the supplementary information for the proposed rule. 60 FR 26010-11. The interim rule permits the advancement of a prisoner's presumptive release date by up to twelve months for successfully completing a residential substance abuse treatment program. This provision comports with the permissible prison term reduction identified by the Bureau of Prisons in its own interim rule on the subject. 60 FR 27695. The existing schedule of permissible reductions in paragraph (e) of § 2.60 will not limit the reward which may be granted under the interim rule for completing the residential drug abuse treatment program. Any reduction under the new policy will be in addition to any other advancement for superior program achievement in areas unrelated to participation in substance abuse treatment programs. The proposed rule included a provision that stated the Commission's intent that the normal reduction under the policy would be twelve months, with certain exceptions. The Commission decided that a precise definition of its policy should be postponed until both the Bureau of Prisons and the Commission obtain experience in the implementation of the agencies' respective rules, and therefore is publishing this rule on an interim basis, with request for further public comment. For the Parole Commission, the need is to determine whether the interim rule can be implemented consistently with the statutory criteria for parole at 18 U.S.C. 4206 (1976). If this does not appear feasible, the Commission may amend or withdraw the interim regulation.

A comment favoring adoption of the proposed rule was received from a representative of the National Association of Criminal Defense Lawyers. This comment encouraged the Commission to revise its proposal to allow the advancement of the prisoner's presumptive release date even if the prisoner had a prior history of violent offenses. The representative noted that the Commission's practice would otherwise diverge from that proposed by the Bureau of Prisons, which would be limited to the prisoner's offense of conviction as a basis for deciding whether the prisoner should be eligible for early release. The Commission did not adopt the recommended revision

since the criteria it must follow in making parole decisions require it to consider the "history and characteristics" of the eligible prisoner and whether his release would jeopardize the public welfare. See 18 U.S.C. 4206(a)(2). The Commission must consider relevant information as to the prisoner's capacity for violence which the Bureau of Prisons may not be required to consider in granting prison term reductions under 18 U.S.C. 3621(e). In addition, the Commission notes that the Bureau has determined that it will not consider the prisoner for early release if his prior criminal record includes a conviction for homicide, forcible rape, robbery, or aggravated assault. 60 FR 27692, 27695.

Implementation

Prisoners will be considered for advancements under the interim rule at any hearing or pre-release record review that is conducted on or after October 2, 1995. The Commission will not reopen cases for prisoners who have a release date with no further hearing or review scheduled. For prisoners who are given hearings or reviews on or after October 2, 1995, the Commission may consider an advancement of the prisoner's presumptive release date under the interim rule even if completion of a residential substance abuse treatment program occurred prior to the effective date of the rule.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this interim rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.60 is amended by adding new paragraphs (g) and (h), to read as follows:

§ 2.60 Superior program achievement.

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(g) Upon notification by the Bureau of Prisons that a prisoner who has a recognized problem with substance abuse, has successfully completed residential substance abuse treatment (in conformity with the criteria set forth for non-parolable prisoners in 18 U.S.C. 3621(e)), the Commission will consider such prisoner for a special advancement, by up to twelve months, of the presumptive release date previously set. Such advancement may be made even though the Schedule of Permissible Reductions in paragraph (e) of this section provides a permissible reduction of less than twelve months, and shall be in addition to any other advancement granted under this section. However, if the prisoner has already received an advancement of his presumptive parole date (or, in the case of a prisoner who has been continued to expiration, has received extra good time credit) for participation in a residential substance abuse treatment program, and the advancement (or good time credit) equals or exceeds the advancement that would be granted under this paragraph, no further advancement shall be granted.

(h) Any advancement under this section (including a special advancement for completion of residential substance abuse treatment) is subject to forfeiture, in whole or in part, whenever a presumptive parole date is rescinded pursuant to § 2.34. In the case of a special advancement under paragraph (g) of this section, the entire advancement shall be forfeited if the Commission finds that the prisoner has engaged in usage, possession, or distribution of any controlled substances subsequent to program completion.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

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