DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners:Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is incorporating into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the paroling jurisdiction that will be assumed by the U.S. Parole Commission on August 5, 1998. The paroling authority of the District of Columbia Board of Parole will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's parole regulations pursuant to federal rulemaking procedures.

DATES: *Effective Date:* August 5, 1998. Comments must be received by December 1, 1998.

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, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33) the U.S. Parole Commission is required, not later than August 5, 1998, to assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. The Act requires the Parole Commission to exercise this authority pursuant to the parole laws and regulations of the District of Columbia. However, it also gives the Parole Commission the authority to amend or supplement any regulation interpreting or implementing the relevant parole laws of the District of Columbia, provided that the Commission adheres to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, as applied to the Commission by 18 U.S.C. 4218.

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia, as currently set forth in the District of Columbia Code of Municipal Regulations, the Commission decided to republish them with appropriate revisions. The Commission decided not to leave these regulations in the D.C. Code of Municipal Regulations because the Revitalization Act makes parole for D.C. Code felons a federal function, and rules promulgated by federal agencies pursuant to the Administrative Procedure Act are required to be published in the **Federal Register** and the Code of Federal Regulations. Notice of this proposed rulemaking was published at 63 FR 17771 (April 10, 1998). Notice of the proposed transfer of these regulations was also published in 45 D.C. Register 2356 (April 17, 1998).

A complete set of regulations for District of Columbia felony prisoners is therefore being incorporated into the Code of Federal Regulations alongside the existing regulations that govern all other criminal offenders who fall under the Commission's jurisdiction. The regulations that govern the remaining functions of the Board of Parole of the District of Columbia will continue to be set forth in the D.C. Code of Municipal Regulations until the Commission assumes the remaining functions of the Board with respect to felons, on or before August 5, 2000.

The revised D.C. parole regulations that will take effect as interim rules effective August 5, 1998, fall into three categories.

First, the Board of Parole's procedural regulations have been amended and supplemented to clarify the procedures that the Commission will follow in considering District of Columbia prisoners for parole. The parole hearing and decisionmaking process will remain essentially the same as that of the D.C. Board of Parole, but in many instances modifications will promote both increased fairness and administrative efficiency in the discharge of this new function.

Second, other revisions reflect recently-enacted District of Columbia laws, such as the Medical and Geriatric Parole Act, which were not previously implemented through regulations.

Third, the Commission has supplemented the existing parole guidelines of the Board of Parole by adopting an improved point score system to replace the scoring system that was removed from the Board's regulations by D.C. Law 10–255 (May 16, 1995). The continued use of this point score system by the D.C. Board of Parole has resulted in a high rate of upward departures from the guidelines. For example, in a random sample of 100 cases decided by the D.C. Board of Parole in 1997, the Commission found departures in more than half of the cases. Factors cited by the Board to justify departures most often appear to involve aspects of the prisoner's current offense or criminal history that indicate a risk of violent recidivism. See, *e.g.*, *Ellis* v. *District of Columbia*, 84 F.3d 1413 (D.C. Cir. 1996), *Smith* v. *Quick*, 680 A.2d 396 (D.C. App. 1996), and *McRae* v. *Hyman*, 667 A.2d 1356 (D.C. App. 1995). The guidelines set forth below retain the basic framework of the Board's guidelines, but incorporate factors that would otherwise be expected to result in decisions outside the guidelines. The Commission intends this improved point score system to serve the Board's original purpose of predicting violent crime and incapacitating offenders with a high probability of serious recidivism. It is also intended to reduce the potential for unwarranted disparity that can be produced by the frequent exercise of unguided discretion.

In this regard, the Parole Commission undertook a research study to identify factors related to current offense and criminal history that can be empirically correlated with repeat violent crime. The research was based on a statistical sampling of D.C. offenders released in 1992 (which provided a five-year follow-up period), as well as on comparative samples from larger federal and Connecticut data bases. The guideline table that is published at this time is based upon factors that were confirmed by the research data as correlated with violent recidivism. Whereas the current D.C. point score demonstrated a weak association with violent recidivism, the score adopted by the Commission at this time shows a significantly improved correlation. Moreover, the Connecticut data produced results that were remarkably consistent with the results obtained with the Commission's D.C. data.

In light of the research results, some factors were added to Category II of the proposed score, and others were dropped from the score as non-predictive. For example, distinguishing between ''high level'' and ordinary violence in the offender's prior record was found to reduce the predictive power of the score, as was the factor of ''multiple current offenses.'' Therefore, these factors were deleted. Drug

trafficking in the current offense (without possession of a firearm) was also found to lower the prediction of violent recidivism, and was therefore deleted.

On the other hand, the basic assumption that a violent current offense predicts for future violence was confirmed, as was the assumption that a violent prior record adds to the predictability of future violence in such cases. The research also pointed to the conclusion that a record of prior violent crime is predictive even if the current offense did not involve violence, so this factor was added. Firearm possession was also found to be strongly predictive, so this item is retained from the original D.C. score. (The points assigned to each factor in Category II of the score reflect that factor's predictive strength relative to the other factors in that Category.)

Although the frequencies of extremely violent crimes (murder, rape, etc.) proved too small to yield empirical research results, the Commission decided that such cases present implied risk levels that would either justify repeated departures, or the inclusion of the relevant factors in the guideline system itself. The latter option was chosen. What constitutes ''violent crime'' in the current offense has therefore been given differentiation so that cases of ''high level'' violence receive appropriate point enhancements. This is consistent with past D.C. practice. The Board of Parole's current point score table assigns a one point enhancement for violence, regardless of the nature and seriousness of the crime, notwithstanding the factors at 28 DCMR 204.18. Departures are therefore frequent for cases of ''unusual cruelty to victims,'' which appears to correlate with ''high level violence'' as defined by the Parole Commission in Category III of the revised point score. See, *e.g., Hall* v. *Henderson*, 672 A.2d 1047 (D.C. App. 1996).

Additionally, the research indicated that the predictive power of the Salient Factor Score (SFS), which is currently used by both the Parole Commission and the D.C. Board of Parole, would be significantly enhanced by increasing the weight given to Item C (age of the commencement of the current offense), from a maximum of 2 points to a maximum of 3 points. The SFS is therefore revised to differentiate better between offenders on the basis of their age at the commencement of the current offense. Taken together, age at the commencement of the current offense and the number of prior convictions and commitments function to predict recidivism by providing a measure of the rate of the offender's past criminal conduct. An additional adjustment in Item C to the scoring of offenders with four prior commitments will further refine the SFS and increase its predictive power. Finally, the Commission has deleted Item F (heroin/opiate dependence), an item that predicts recidivism by itself but which does not add to the predictive power of the SFS once all the other items are taken into account. The Commission will thus avoid the scoring problems associated with the issue of heroin/opiate dependence (which are due to the inadequate background information maintained on many D.C. prisoners). The SFS will remain a ten-point score and the parole prognosis categories (as well as the scores that define theses categories) will not be changed.

In sum, although some of the ''type of risk'' factors that indicate a prisoner's potential for violent recidivism are given increased weight in the new scoring system, this will render unnecessary the unstructured discretionary departures that were frequently ordered by the D.C. Board of Parole in the past to compensate for an inadequate violence prediction (''type of risk'') scale. Moreover, increased weight is given to institutional performance, both by permitting program achievement to be balanced against any misconduct during the same period, and by assigning an additional point to superior program achievement. Positive achievement in prison programs, as well as negative institutional behavior, will therefore continue to produce significant adjustments to the ''total point score'' each time a prisoner who has been denied parole appears for a reconsideration hearing.

Finally, overcrowding in District prisons has long been a serious concern. However, the Commission's research indicates that adherence to the guidelines at § 2.80 will not increase overall prison time or produce more prison overcrowding. The rehearing guidelines at § 2.80(j) have been modified downward for prisoners with Base Point Scores of 7–10 to help keep the estimated average prison time served by D.C. prisoners within current levels. The Commission will continue to study the available data to determine whether the continuance ranges at § 2.80(j) should be further adjusted to avoid any unintended impact on the prison population, while ensuring that serious offenders will serve periods of imprisonment that are adequate to protect the public safety.

Explanatory Comments By Section

Comment to § 2.70: This section sets forth the authority assigned to the Parole Commission under the D.C. Revitalization Act and carries forth the provisions of 28 DCMR 100 with two exceptions. First, 28 DCMR 100.10 was not retained because the statutory authority upon which it was based has been repealed. Second, 28 DCMR 100.11 was not retained because it is redundant with paragraph (b) (derived from 28 DCMR 100.2), which sets forth the Commission's authority regarding committed youth offenders in a broader form. This proposed rule also reflects a 1993 amendment to the D.C. Code regarding geriatric and medical cases, and updates the references in 28 DCMR 100 regarding the Youth Corrections Act to take into account the Youth Rehabilitation Act Amendment of 1985.

Comment to § 2.71: This rule carries forth the provisions of 28 DCMR 102 with two modifications. First, youth offenders will have to complete a standard parole application form. Second, the rule provides that initial hearings are to be scheduled, where practicable, at least 180 days before the prisoner's eligibility date. Current D.C. Parole Board practice generally provides initial hearings about 60 days prior to the prisoner's eligibility date. It is expected that, on August 5, 1998, there will be a significant backlog of parole applicants for whom the 180 day deadline will have already passed. The Commission will hear these prisoners on successive dockets until compliance with this rule can be achieved.

Comment to § 2.72: This rule carries forth the provisions of 28 DCMR 103 with the following changes. First, it adds a requirement that the examiner discuss with the prisoner the pertinent file information. This will ensure that the prisoner is informed of the main information being considered by the Commission, and given an opportunity to respond. Second, although the rule retains the D.C. prohibition on representatives at parole hearings in District of Columbia facilities, it allows a prisoner to have a representative at a parole hearing in a federal facility, consistent with the procedure for federal prisoners. The same applies to prehearing disclosure of file documents, which likewise depends upon correctional staff resources that are not available in District facilities. Third, although 28 DCMR 103 permits a prisoner's supporters to visit the Board to discuss a case at any time, the interim rule requires a prisoner's supporters to request an office visit at least 30 days before the parole hearing so that their input can be included in the record that the examiner will consider at the hearing. Office visits at other times will be permitted only on a showing of good

cause. Fourth, the rights of victims as set forth in a 1989 amendment to D.C. law are spelled out and amplified. Victims of violent crimes are given the right to appear at the parole hearing, and to submit testimony or a written statement. Although current D.C. procedures permit only a written statement, federal practice permits victims to testify. See *Phillips* v. *Brennan*, 969 F.2d 384 (7th Cir. 1992) (victim permitted to testify at parole hearing without presence of offender). Office visits are also permitted for victims, subject to the same 30-day notice requirement that applies to supporters. Fifth, the rule follows federal law at 18 U.S.C. 4208(f) in allowing the prisoner to obtain a copy of the tape recording of his parole hearing.

Comment to § 2.73: This rule carries forth the statutory criteria for parole contained in 28 DCMR 200. In addition, it explains that the parole function for D.C. Code offenders rests on a premise somewhat different from that of the federal parole guidelines. See *Cosgrove* v. *Thornburgh*, 703 F. Supp. 995, 1004, n.6 (D.D.C. 1988). For D.C. Code offenders, the revised guidelines in § 2.80 of these rules treat the minimum term of imprisonment imposed by the court as the measure of basic accountability for the offense of conviction. Only in unusual cases is the seriousness of the offense a basis for denial of parole. The normal function of parole consideration is to determine whether the prisoner would be ''a responsible citizen if he is returned to the community'' and whether ''release on parole is consistent with the public safety.'' See *White* v. *Hyman*, 647 A.2d 1175 (D.C. App. 1994). Hence, this provision embodies the Commission's decision to maintain the existing purpose of parole for the District of Columbia.

Comment to § 2.74: This is a new rule. It requires the issuance of a statement of reasons for parole denial, a procedure not included in current District of Columbia Parole Board procedures. Federal practice under 18 U.S.C. 4206 is the model for this procedural reform, as well as for the 21-day time period for issuing the decision.

Comment to § 2.75: This rule carries forth the provisions of 28 DCMR 104, except that the policy of setting continuances for cases by reference to the length of the prisoner's sentence is replaced by reference to the new time ranges for rehearings that are set forth in § 2.80. In addition, the proposed rule prohibits the scheduling of a reconsideration hearing more than five (5) years from the date of the last hearing. At present, the D.C. Parole Board may order a reconsideration hearing exceeding this limit if it departs from its guidelines. Finally, the proposed rule authorizes special reconsideration hearings for new and significant information, and spells out the continuing authority of the D.C. Parole Board to revoke parole and set rehearing dates.

Comment to § 2.76: This rule carries forth the provisions of 28 DCMR 201 regarding applications for a reduction of minimum term. In addition, it sets forth the arrangement the Commission has with the U.S. Attorney's Office regarding the presentation of applications for a reduction in a minimum term to the Superior Court.

Comment to § 2.77: This is a new rule that sets forth criteria and procedures for implementing the medical parole provisions at D.C. Code 24–261–64, 267.

Comment to § 2.78: This is a new rule that sets forth criteria and procedures for implementing the geriatric parole provisions at D.C. Code 24–261, 263–64, 267.

Comment to § 2.79: This rule carries forth the provisions of 28 DCMR 205 in a somewhat modified form to conform to the procedure set forth at § 2.6 of these rules. A minor substantive change is that the Commission will consider the underlying circumstances of the misconduct in setting a date for review hearing rather than set a parole date that is contingent on the restoration of forfeited good time by institutional officials.

Comment to § 2.80: This section carries forth the provisions of 28 DCMR 204 in modified form. This revision of the D.C. Board's guideline system retains its fundamental three-part structure (the salient factor score, the total point score, and the grant/denial policy). The guideline system continues to serve as a measurement of both the degree and seriousness of the risk to the public safety presented in each case. The policy of permitting parole to be granted at initial hearings for those who merit 0–2 points on the ''total point score,'' and permitting parole to be granted at rehearings for those who merit 0–3 points, is also retained. However, the relevant factors listed in the point score as indicating ''seriousness of the risk'' have been revised substantially along with the number of points assigned to each relevant factor. The purpose of the revisions is to produce a score that better predicts the probability of violent offenses, and that differentiates between ordinary and extremely violent offenses (e.g., murder, rape, assault with serious bodily injury). Thus, the revised score includes factors which appear to indicate an increased probability that recidivism (if it occurs) will be of a serious nature. At the same time, the possible points for superior program achievement in prison also are increased.

The primary intent is to protect the public safety, and to capture within the guidelines the many decisions that are now outside the guidelines because of the D.C. Board's well-founded concerns about the ''seriousness of the risk.'' The Parole Commission itself has found it necessary to depart from the D.C. parole guidelines based on the same concerns. See *Duckett* v. *U.S. Parole Commission*, 795 F. Supp. 133 (M.D. Pa. 1992) (current offenses involved multiple separate crimes of violence not reflected by the point score).

The total point score thus revised permits (in the worst-case scenario) a repeat offender to receive as many as 10 points. However, point scores only go to this level if there are extraordinary aggravating factors (*e.g.*, current murder with an extensive prior record of violent crimes) that would otherwise justify a guideline departure. If the offender's past record is less extensive, the total point score will be correspondingly lower and will permit parole based on good behavior over a sufficient period of time in prison. What constitutes a ''sufficient period of time in prison'' is determined by the need to incapacitate the offender according to the risk level he or she presents, as reflected in the Guidelines for Time to Rehearing at § 2.80(j).

Comment to § 2.81: This rule carries forth the provisions of 28 DCMR 202.2, but follows federal practice by permitting an effective date of parole up to 9 months in advance. The D.C. Parole Board rule does not specify any time period. The rule also provides that parole dates will be set no more than 6 months in advance if placement in a halfway house is not required. This policy will leave the Commission with the flexibility to ensure adequate release planning before any prisoner is released on parole. Difficulties in determining the adequacy of release plans, in the availability of necessary halfway house resources, and in the adequacy of basic supervision resources, are presently serious issues that can impede the releases of many D.C. Code prisoners.

Comment to § 2.82: This rule carries forth the provisions of 28 DCMR 208 regarding release planning. Express authority is added for the Commission to rescind a grant of parole if failure to produce an acceptable release plan persuades the Commission that the

release of the prisoner would lead to rapid failure in the community.

Comment to § 2.83: This rule carries forth that part of 28 DCMR 209 that concerns release to other jurisdictions.

Comment to § 2.84: This rule carries forth the provisions of 28 DCMR 207 pertaining to the conditions of parole.

Comment to § 2.85: This section carries forth the provisions of 28 DCMR 207 regarding release on parole and specifies when a parole becomes operative, based on 28 CFR § 2.29(a).

Comment to § 2.86: This rule carries forth the provisions of 28 DCMR 212.

Comment to § 2.87: This rule supplements the District of Columbia parole regulations by providing for the use of federal reparole guidelines (in the absence of a new D.C. Code sentence). The current parole regulations of the District of Columbia include rehearing schedules for parole violators but do not provide policy guidance for the substantive decision to grant or deny reparole. Moreover, neither federal nor District of Columbia law mandates any difference in the basic purposes served by revocation and reparole. This rule will ensure that parole violators will receive consistent decisions, and will know from the date of their first rehearing how much time must be served to correct and sanction the parole failure.

Comment to § 2.88: This carries forth the operative provisions of 28 DCMR 101. It maintains the confidentiality of D.C. Board parole files while conforming the regulations to federal parole practice under the Privacy Act of 1974.

Comment to § 2.89: This rule sets forth the provisions from Part A of these rules that, except to the extent otherwise provided by law, shall also apply to District of Columbia Code prisoners.

Comment to § 2.90: This is a new rule that is necessary to clarify the status of prior orders of the D.C. Board (parole grants, denials, revocations, etc.) as of August 5, 1998. It maintains the Commission's longstanding practice of implementing prior D.C. Board orders when a D.C. Code offender enters federal jurisdiction, including rehearing dates, unless duly reconsidered and changed. See *Morgan* v. *District of Columbia,* 618 F. Supp. 754 (D.D.C. 1985).

The Public Comment

The D.C. Public Defender's Service and the D.C. Prisoners' Legal Services Project argue that the proposed regulations will ''increase the measure of punishment'' for D.C. offenders, and will therefore violate the *ex post facto* clause. However, it was also acknowledged that the D.C. Board of Parole does not always follow its own rules. This acknowledgment, in effect, concedes the argument. Parole guideline changes, especially those that incorporate factors that are used to exceed the guidelines on a discretionary basis, do not offend the *ex post facto* clause. See, *e.g., Davis* v. *Henderson,* 652 A.2d 634 (D.C. App. 1995), *Warren* v. *U.S. Parole Commission,* 659 F.2d 183 (D.C. Cir. 1981), *Inglese* v. *U.S. Parole Commission,* 768 F.2d 932 (7th Cir. 1985), and *Yamamoto* v. *U.S. Parole Commission,* 794 F.2d 1294 (8th Cir. 1986). Moreover, the revised guidelines are intended only to structure the use of paroling discretion in a more consistent manner, and not to reduce the decisionmaker's authority to allow individual factors to determine the final outcome in every case. The objective of the Commission is to provide a rational, research-based framework for its decisions that is based on a sample of actual past D.C. Board of Parole decisions.

Other contentions are that the Commission has no authority to administer the Youth Rehabilitation Act (based on the proposition that YRA prisoners convicted of felony offenses under the D.C. Code are somehow not ''imprisoned felons''), that the Salient Factor Score has no demonstrated validity as a predictor of recidivism for D.C. offenders, that the United States Attorney should not be permitted to object when the Commission proposes to petition the sentencing court for reduction of a D.C. prisoner's minimum sentence, that prisoners should not be required to undergo the ''needless formality'' of a parole application, and that there should be representatives at parole hearings in D.C. facilities. The revised version of the Salient Factor Score has proved valid for D.C. Code offenders. The comment about representatives is understandable, but it appears that the D.C. Department of Corrections historically has been unwilling (or unable) to handle the security problems posed by outside representatives. Objections by the U.S. Attorney often bring to light new information which should be reviewed prior to filing with the court. An application for parole provides important information and provides evidence, at least, of the prisoner's ability to meet the reporting requirements of parole supervision.

Other commentary was devoted to pointing out discrepancies between the proposed rules at §§ 2.77 and 2.78, and the Medical and Geriatric Parole statute. These comments were very helpful, and the Commission has made revisions accordingly. There was praise for the Commission's proposal to conduct initial parole hearings within 180 days of eligibility, which should reduce average prison stays for offenders with scores of 0–2 (indicating parole at eligibility) by 5 to 9 months. How soon the Commission can accomplish this goal will be dependent, in large measure, on the D.C. Department of Corrections, and its ability to provide needed inmate file information in a timely manner.

Finally, the Public Defender Service objected to crime victims being permitted to testify at parole hearings, on the theory that because D.C. Code 23–103 does not guarantee victims this right, permitting them to do so would be *ultra vires.* This is an erroneous argument because it would reduce the victim to the status of a mere ''opponent'' of parole. A victim is more than that. A victim is both the primary witness to the crime and its impact, and no less a participant in the criminal justice process than the eligible prisoner. Moreover, D.C. Code 23–103A was intended to guarantee minimum rights and not to set limits on the Board of Parole's authority to consider relevant evidence. The Commission has clarified § 2.72(e) accordingly.

There were a few comments from individual prisoners, whose concerns chiefly appear to be to receive the same opportunities as federal prisoners, and not to be subjected to anything required by the National Capital Revitalization Act that would make them serve more time in prison.

Implementation

The regulations set forth below will be made effective as interim rules on August 5, 1998, with a further period for public comment. The rules are applicable only to prisoners serving sentences imposed under the District of Columbia Code, except that the revised Salient Factor Score (SFS–98) in § 2.20 will be applied to U.S. Code prisoners at all hearings held on or after August 5, 1998, pursuant to the Commission's standard retroactivity policy.

The Commission will evaluate the interim rules in the light of further public comment and operational experience before adopting final rules. The interim rules will govern all D.C. Code parole hearings and related matters coming before the Commission on or after August 5, 1998, with the exception of the guidelines at § 2.80, which will be applied only to D.C. Code prisoners who are given initial parole hearings on or after August 5, 1998. See § 2.80(e). Prisoners serving aggregated U.S./D.C. Code sentences will continue

to be evaluated under (redesignated) § 2.65.

Good Cause Finding

The Commission is making these interim rules effective less than 30 days from the date of this publication for good cause pursuant to 5 U.S.C. 553(d)(3). First, August 5, 1998, is the deadline established by the National Capital Revitalization Act for the Commission to assume the function governed by the regulations. Second, the empirical research found necessary by the Commission to validate its proposed guidelines as a reliable prediction device for violent recidivism, and to verify the likely impact of these guidelines on prison population levels, proved more complex and difficult to accomplish than originally anticipated. Final results were not available for the Commission's review until June 30, 1998, and this delayed final voting by the Commission until July 9, 1998.

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 interim rule has, accordingly, not been reviewed by the Office of Management and Budget. The interim 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).

Subpart A—United States Code Prisoners and Parolees

2. Section 2.62 is redesignated as § 2.68.

3. Sections 2.1 through 2.67 (except 2.62) are designated as subpart A, and §§ 2.63 through 2.67 are redesignated as §§ 2.62 through 2.66. The heading for subpart A is added as set forth above.

4. Section 2.20 is amended by removing Item F from the Salient Factor Scoring Manual (HISTORY OF HEROIN/OPIATE DEPENDENCE), and by redesignating Item G (OLDER OFFENDERS) as Item F. In addition, Item C is revised to read as follows:

§ 2.20 Paroling policy guidelines; Statement of general policy.

* * * * *

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE)

C.1 If the subject was 26 years of age or more at the commencement of the current offense and has 3 or fewer prior commitments, score 3; if four prior commitments, score 2; if five or more prior commitments, score 1.

C.2 If the subject was 22–25 years of age at the commencement of the current offense and has three or fewer prior commitments, score 2; if four prior commitments, score 1; if five or more prior commitments, score 0.

C.3 If the subject was 20–21 years of age at the commencement of the current offense and has three or fewer prior commitments, score 1; if four or more prior commitments, score 0.

C.4 If the subject was 19 years of age or less at the commencement of the current offense, score 0.

C.5 Definitions (a) Use the age of the commencement of the subject's current offense behavior, except as noted under the special instructions for probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

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Subpart B—Transfer Treaty Prisoners and Parolees

5. Redesignated § 2.68 is designated as subpart B. Section 2.69 is added to Subpart B and reserved. The heading for subpart B is added as set forth above.

6. Subpart C is added to consist of §§ 2.70 through 2.89 to read as follows:

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

Subpart C—District of Columbia Code Prisoners and Parolees

§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, P.L. 105–33, and D.C. Code 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to Section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners who are serving sentences for felony offenses, and who are not otherwise ineligible for parole by statute, including offenders who have been returned to prison upon the revocation of parole or mandatory release, wherever confined. (D.C. Code 24–208). The above authority shall include youth offenders who are committed to prison for treatment and rehabilitation based on felony convictions under the D.C. Code. (D.C. Code 24–804(a)).

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate (D.C. Code 24–201(c)).

(d) The Commission shall have authority to grant parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court (D.C. Code 24–263 through 267).

(e) The Board of Parole of the District of Columbia will continue to have jurisdiction over District of Columbia Code offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. The jurisdiction and authority of the Board over such offenders will be transferred to the U.S. Parole Commission by August 5, 2000, pursuant to Section 11231(a)(2) of the Act.

(f) When the D.C. Board of Parole has issued a warrant for a parolee who has been confined in a federal prison to serve a new U.S. or D.C. Code sentence, the U.S. Parole Commission shall have jurisdiction to revoke parole and to determine the disposition of such warrant. (D.C. Code 24–209.)

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. The Commission may then conduct an initial hearing or grant an effective date of parole on the record. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to the prisoner's date of eligibility for parole.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner who has applied for parole shall appear in person for a hearing before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support. If the examiner determines that the available file material is not adequate for this purpose the examiner may order the hearing to be postponed to the next docket so that the missing information can be requested.

(b) Parole hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a District of Columbia facility shall not be accompanied by counsel, any relative or friend, or any other person (except a staff member of that facility). A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b) of this part.

(d) Rehearing disclosure of file material will be available to prisoners and their representatives only in the case of prisoners confined in federal facilities, and pursuant to § 2.55 of this part.

(e) A victim of a crime of violence, as defined in D.C. Code 23–103a(a)(3), or a victim of any other crime, or a representative from the immediate family of a victim if the victim has died, shall have the right

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. A victim or representative may also request permission to appear for an office hearing conducted by an examiner (or other staff member) in lieu of appearing at a parole hearing. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for confidentiality by the victim or representative.

(f) Attorneys, family members, relatives, friends, or other interested persons desiring to submit information pertinent to any prisoner may do so by forwarding letters or memoranda to the offices of the Commission prior to a scheduled hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing.

(g) An office visit at a time other than set forth in paragraph (f) of this section may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22 of this part. Notwithstanding the above restriction on office visits, written information concerning a prisoner may be submitted to the offices of the Commission at any time.

(h) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after he or she has served the minimum term of the sentence imposed, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment in respect to the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80 of this part. However, in unusual cases, parole may be denied based upon the gravity of the offense.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established by these rules, it will be

deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c) of this part.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if there is no docket of hearings scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time (''continue to expiration''). The first reconsideration date shall be calculated from the prisoner's eligibility date; any subsequent reconsideration dates shall be calculated from the date of the last hearing. However, when the prisoner has waived the initial hearing, the first reconsideration shall be calculated from the initial hearing date.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence, if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release.

(c) The scheduling of a reconsideration date does not imply that parole will be granted at such hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

(f) Upon entering an order revoking parole, the Board of Parole of the District of Columbia may grant an immediate reparole, or order the parole violator to be returned to prison. In the latter case, the Board will order a reconsideration date pursuant to its regulations. The Commission shall have sole authority to grant or deny reparole to an offender who has been returned to prison upon an order revoking parole.

§ 2.76 Reduction in minimum sentence.

(a) A prisoner who has served three (3) or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code 24-201c. The prisoner's request to the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted. The Commission shall require the submission of a progress report before approving such a request.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners.

(c) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

(d) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two (2) years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

§ 2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined certifying that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Release on medical parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for medical parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a medical parole on the basis of terminal illness if:

(1) The institution's medical staff has provided the Commission with a reasonable medical judgment that the prisoner is within six months of death due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others; and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner's condition is such as to render the prisoner incapable of continuing his criminal career;

(2) The prisoner will not be a danger to himself or others; and

(3) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted.

(e) A prisoner, or the prisoner's representative, may apply for a medical parole by submitting an application to the institution medical staff, who shall forward the application accompanied by a medical report and any recommendations within 15 days. The Commission shall render a decision within 15 days of receiving the application and report.

(f) A prisoner, the prisoner's representative, or the institution may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for medical parole. (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.78 Geriatric parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity,

illness, or disease related to aging, the Commission shall determine whether or not to release the prisoner on geriatric parole. Release on geriatric parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for geriatric parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a geriatric parole if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of a prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution medical staff, who shall forward the application accompanied by a medical report and any recommendations within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors:

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(D.C. Code 24–265(c)(1)–(7)).

(f) A prisoner, the prisoner's representative, or the institution, may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for geriatric parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s) and if the Commission is satisfied that the parole date set has required a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

§ 2.80 Guidelines for D.C. Code offenders.

(a) *Introduction.* In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) *Salient factor score and criminal record.* The prisoner's salient factor score shall be determined by reference to the salient factor scoring manual in § 2.20 of this part. The salient factor score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

(c) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. The Commission's general policy shall be that a single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at all hearings. A persistent record of lesser offenses may also be counted as negative institutional behavior, whether at an initial hearing or a rehearing. At initial hearings, an infraction free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(d) *Program achievement.* The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(e) *Implementation.* These guidelines shall be applied to all prisoners who are given initial parole hearings on or after August 5, 1998. For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this section. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(f) *Point assignment table.*

Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

Category I: Risk of Recidivism	(Salient factor score)
10–8 (Very Good Risk)	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
Category II: Current or Prior Violence	(Type of Risk)
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D . No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1
Category III: Death of Victim or High Level Violence	
Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Current offense was high level or other violence with death of victim resulting	+3
B. Current offense involved attempted murder	+2
C. Current offense was other high level violence	+1
Base Point Score (Total of Categories I–III)	_____
Category IV: Negative Institutional Behavior	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Negative institutional behavior involving: (1) assault upon a correctional staff member, with bodily harm inflicted or threatened, (2) possession of a deadly weapon, (3) setting a fire so as to risk human life, (4) introduction of drugs for purposes of distribution, or (5) participating in a violent demonstration or riot	+2
B. Other negative institutional behavior	+1
Category V: Program Achievement	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Acceptable institutional behavior with no program achievement	0
B. Acceptable institutional behavior with ordinary program achievement	−1
C. Acceptable institutional behavior with superior program achievement	−2
Total Point Score (Total of Categories I–V)	_____

(g) *Definitions and instructions for application of point assignment score.*

(1) *Salient factor score* means the salient factor score set forth at § 2.20 of this part.

(2) *High level violence* in Category III means any of the following offenses—

(i) Murder:

(ii) Voluntary manslaughter;

(iii) Arson of an occupied (or potentially occupied) building;

(iv) Forcible rape or forcible sodomy (first degree sexual abuse);

(v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;

(vi) Burglary of a residence while armed if a victim was in the residence at the offense;

(vii) Obstruction of justice through violence or threats of violence;

(viii) Any offense involving sexual abuse of a person less than sixteen years of age;

(ix) Any felony resulting in mayhem, malicious disfigurement, or other *serious bodily injury* (See Definition No. 3);

(x) Any offense defined below as *other violence* in which the offender intentionally discharged a firearm;

(3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) *Other violence* means any of the following felony offenses that does not qualify as *high level violence*—

(i) Robbery;

(ii) Residential burglary;

(iii) Felony assault;

(iv) Felony offenses involving a threat, or risk, of bodily harm;

(v) Felony offenses involving sexual abuse or sexual contact.

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (i.e., part of the same course of conduct as the offense of conviction).

(7) Category IIE applies whenever a firearm is possessed by the offender during, or used by the offender to commit, any offense that is not scored under Category IIA, B, C, or D. Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.

(9) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as violence in current offense. If negative institutional behavior is treated as an additional current offense, points may still be assessed under Category IVA or B for other disciplinary infractions.

(10) *Superior program achievement* means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish. The Commission may, in its discretion, grant more than a 2 point deduction in the most clearly exceptional cases.

(h) *Guidelines for decisions at initial hearing—Adult offenders.*

In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

Total Points	Guideline recommendation
(1) If Points =0	Parole at initial hearing with low level of supervision indicated.
(2) If Points =1	Parole at initial hearing with high level of supervision indicated.
(3) If Points =2	Parole at initial hearing with highest level of supervision indicated.
(4) If Points =3+	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section:

(i) *Guidelines for decisions at initial hearing—Youth offenders.* In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) If Points = 0	Parole at initial hearing with conditions established to address treatment needs;
(2) If Points = 1+	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(j) *Guidelines for time to rehearing adult offenders.* (1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

Base point score (Categories I through III)	Months to Rehearing
0–4	12–18
5	18–24
6	18–24
7	18–24
8	18–24
9	22–28
10	26–32

(2) The time to a rehearing shall be determined by the prisoner's base point score, and not by the total point score at the current hearing, which indicates only whether parole should be granted or denied. *Exception:* In the case of institutional misconduct deemed insufficiently serious to warrant a change in the prisoner's total point score, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36 of this part.

(k) *Guidelines for decisions at subsequent hearing—Adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total Points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.
If Points = 4+	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(l) *Guidelines for decisions at subsequent hearing—Youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total Points	Guideline recommendation
If Points = 0–3	Parole with highest level of supervision indicated.
If Points = 4+	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if Commission's program objectives have been met.

(m) *Decisions outside the guidelines—All offenders.*

(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a parole candidate notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer parole risk than indicated by salient factor score:* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Repeated failure under supervision (pretrial release, probation, or parole);

(B) Lengthy history of criminally related substance (drug or alcohol) abuse; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the ''poor'' prognosis category).

(ii) *More serious parole risk:* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Extensive record of violence beyond that taken into account in the guidelines;

(B) Current offense aggravated by extraordinary criminal sophistication orleadership role;

(C) Unusual cruelty (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual degree of violence attempted or committed in relation to type of current offense; or

(E) Unusual magnitude of offense in terms of multiple victims, money, drugs, weapons, or other commodities involved.

(3) Factors that may warrant a decision below the guideline include, but are not limited to, the following:

(i) *Better parole risk than indicated by salient factor score.* The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) a prior criminal record resulting exclusively from minor offenses;

(B) a substantial crime-free period in the community for which credit is not already given on the salient factor score;

(C) a change in the availability of community resources leading to a better parole prognosis;

(ii) *Other factors:*

(A) Substantial cooperation with the government that has not been otherwise rewarded;

(B) Substantial period in custody on other sentence(s) or additional committed sentences sufficient to warrant a finding that the offender meets the criteria for parole.

§ 2.81 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

§ 2.82 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by offender supervision staff, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) The Commission may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73 of this part. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence.

(2) Evidence that the parole will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission.

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

§ 2.83 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia.

§ 2.84 Conditions of release.

(a) Parole is granted subject to the conditions imposed by the Commission as set forth in the certificate of parole. These conditions shall include, but not be limited to, the following. The parolee must:

(1) Obey all laws;

(2) Report immediately upon release to his or her assigned supervision office for instructions;

(3) Remain within the geographic limits fixed in the parole certificate unless official approval is obtained;

(4) Refrain from visiting illegal establishments;

(5) Refrain from possessing, selling, purchasing, manufacturing or distributing any controlled substance, or related paraphernalia;

(6) Refrain from using any controlled substance or drug paraphernalia unless such usage is pursuant to a lawful order of a practitioner and the parolee promptly notifies the Commission and his or her supervision officer of same;

(7) Be screened for the presence of controlled substances by appropriate tests as may be required by the Board of Parole or the Supervision Officer;

(8) Refrain from owning, possessing, using, selling, or having under his or her control any firearm or other deadly weapon;

(9) Find and maintain legitimate employment, and support legal dependents;

(10) Keep the supervision officer informed at all times relative to residence and work, and report all arrests;

(11) Refrain from entering into any agreement to act as an informer or special agent for a law enforcement agency without permission from the supervision authority; and

(12) Cooperate with the officials responsible for his or her supervision and carry out all instructions of his or her supervision officer and such special conditions as may have been imposed.

(b) The Commission may add to, modify, or delete any condition of parole at any time prior to the release of the offender. Following delivery of the parole or mandatory release certificate, such jurisdiction is vested in the Board of Parole of the District of Columbia until that jurisdiction is transferred to the Commission on or before August 5, 2000.

§ 2.85 Release on parole.

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind and deny a parole previously granted, based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (*e.g.*, to permit the use of graduated sanctions for drug treatment program infractions) for up to 120 days without a hearing.

(c) After a prisoner has been granted a parole effective date, the institution shall notify the Commission of any serious disciplinary infractions committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee subject to the jurisdiction of the Board of Parole of the District of Columbia.

§ 2.86 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations, or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, except that if the offense of conviction was committed before April 11, 1987, such expiration date shall be less one hundred eighty (180) days. Every provision of this part relating to an individual on parole shall be deemed to include individuals on mandatory release.

(c) Each prisoner released in accordance with this section shall be subject to parole supervision upon the authorized delivery of a certificate of mandatory release.

§ 2.87 Reparole.

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at § 2.21 of this part, which shall include the establishment of a presumptive or effective release date pursuant to § 2.12(b) and interim hearings pursuant to § 2.14. However, if the prisoner is also eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, the guidelines at § 2.80 shall be applied in lieu of such provisions. Reparole hearings shall be conducted according to the procedures set forth in § 2.72 of this part.

§ 2.88 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided below.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c) of this part.

(c) Information other than as described in paragraph (b) may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56 of this part.

§ 2.89 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in subpart A of this part are also applicable to District of Columbia Code offenders:

2.5 Sentence aggregation.
2.7 Committed fines and restitution orders.
2.8 Mental competency procedures.
2.10 Date service of sentence commences.
2.16 Parole of prisoner in State, local, or territorial institution.
2.19 Information considered.
2.22 Communication with Commission.
2.23 Delegation to hearing examiners.
2.32 Parole to local or immigration detainers.
2.34 Rescission of parole.
2.56 Disclosure of Parole Commission file.
2.66 Aggregated U.S. and D.C. Code sentences.

§ 2.90 Prior orders of the Board of Parole.

Any prior order entered by the Board of Parole of the District of Columbia shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission at a regularly scheduled hearing. It shall not constitute grounds for reopening a case that the prisoner is subject to an order of the Board of Parole that fails to conform to a provision of this part.

Dated: July 15, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

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