# THE SENTENCING OPTIONS OF FEDERAL DISTRICT JUDGES

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# I. INTRODUCTION

When a judge sentences a criminal offender to a term of imprisonment, one thing is nearly certain: the offender will not be imprisoned for the period specified in the sentence. The sentence imposed by the judge is a fiction. Needless to say, however, it is a fiction with real consequences. This publication is an effort to describe the judge's sentencing options in terms of those consequences. It goes beyond the formal language of the statutes, and considers the effect of the choice of sentence on the offender's treatment at the hands of the Bureau of Prisons and the Parole Commission.

The work has been prepared principally for the benefit of newly appointed federal district judges. It is believed that it will also be useful to more experienced judges, although they will presumably find much less that is new.

Obviously, a publication such as this should not be the sole source of information about the sentencing options available. Ranking high among the other sources are visits to the institutions to which incarcerated offenders are sent. A 1976 resolution of the Judicial Conference of the United States states "that the judges of the district courts, as soon as feasible after their appointment and periodically thereafter, shall make every effort to visit the various Federal correctional institutions that serve their respective courts." Many judges regard such visits as extremely valuable.

For the newly appointed district judge, the most surprising feature of the system described in this publication will probably be the distribution of power between the sentencing judge and the United States Parole Commission. Pursuant to various statutes, the judge has broad authority to determine the sentence of an offender. If the sentence is to imprisonment, the judge's sentence determines the offender's parole eligibility date and (subject to "good time" deductions) the maximum duration of incarceration. Within the limits so established, the Parole Commission determines the actual release date. Pursuant to 18 U.S.C. § 4203(a)(1), the Commission has issued guidelines for making such determinations. Under those guidelines, the primary determinants of an offender's release date are the severity of the offense committed and the offender's prior record, drug history, and employment record--all factors that were known at the time of sentencing by the judge. Contrary to some commonly held notions--

1. It is <u>not</u> the policy of the Parole Commission to release offenders on their parole eligibility dates if their conduct while in prison is satisfactory. That probably never was the policy.

2. It is <u>not</u> the policy of the Commission to release offenders upon a determination that they have reached the optimum time for release in terms of rehabilitative progress. That was once an important factor in release decisions, but no longer is. The lack of

emphasis on this factor reflects the widespread belief among students of corrections that inmates' post-release behavior cannot reliably be predicted on the basis of behavior while incarcerated.

The present policies of the Parole Commission are designed to provide consistency in release dates for offenders similarly situated. They reflect the view that a major function of the parole system is to compensate for disparity in the sentences handed down by the judges.

Another feature of the system that may come as a surprise is the limited practical importance of two special sentencing authorities that were designed to facilitate rehabilitation--the Youth Corrections Act and the Narcotic Addict Rehabilitation Act. The selection by the sentencing judge of one of the special authorities does make a difference in the subsequent treatment of the offender, but the difference is not always what one would be led to think from reading the statutory language.

The administrative policies described here are those in effect as of October 1, 1980. They are, of course, subject to revision, and revisions may apply to offenders sentenced currently.

## II. BASIC SENTENCING OPTIONS FOR ADULT OFFENDERS

### A. Imprisonment

#### 1. Term

The maximum term that the judge may impose is set forth in the statute defining the crime. Generally, the judge may impose any term up to the maximum. A few statutes have minimum terms (e.g., 18 U.S.C. § 924(c)), and a few have fixed terms (e.g., 18 U.S.C. § 2114).

#### 2. "Good time"

A prisoner earns good time both through good behavior and through participation in certain kinds of activity. Good time earned has the effect of reducing the maximum possible period of incarceration under the sentence. It does not necessarily reduce the actual time served because it does not operate on the parole date; the conduct that generates good time may or may not be considered relevant by the Parole Commission.

#### 3. Parole eligibility

##### a. Term of more than one year (or sum of consecutive terms more than one year)

A prisoner is normally eligible for parole release after one-third of the term. 18 U.S.C. § 4205(a).

In the case of a life sentence or a sentence of more than 30 years, the prisoner is eligible after 10 years. 18 U.S.C. § 4205(a). As this provision is interpreted by the Parole Commission and the Bureau of Prisons, consecutive sentences do not delay eligibility beyond 10 years.

In the sentence, the judge may designate an earlier parole eligibility date or specify that the prisoner is immediately eligible. 18 U.S.C. § 4205(b)(1), (2).

##### b. Term of six months through one year (or sum of consecutive terms)

A prisoner is normally not eligible for parole.

At the time of sentencing, the judge may "provide for the prisoner's release as if on parole after service of one-third of such term." 18 U.S.C. § 4205(f). There is some doubt whether the judge may establish a release date some time after the one-third mark or whether the authority under this provision is merely to provide for release at the one-third mark.

c. Term of less than six months (or sum of consecutive terms)

Prisoners are not eligible for parole.

B. Residence in halfway house

The Bureau of Prisons operates a network of halfway houses--"community treatment centers"--principally for offenders who are approaching the ends of terms of imprisonment. Newly sentenced offenders may be required to reside in such halfway houses in two ways:

(1) The offender may be sentenced to a term of imprisonment, with a request by the judge that he serve his time in a community treatment center. The Bureau of Prisons will generally honor such a request if the offender qualifies for minimum-security placement. If the placement turns out to be unsatisfactory, the Bureau of Prisons retains discretion to determine how the offender is to serve the remainder of his time.

Unless the sentencing judge requests assignment to a community treatment center, an offender sentenced to imprisonment will not be initially assigned to one, and is likely to be transferred to such a center only for the last few months before release.

(2) The offender may be granted probation, with residence in a community treatment center as a probation condition, but only if the Attorney General certifies that adequate facilities, personnel, and programs are available. If the placement turns out to be unsatisfactory and the Bureau concludes that residence should be terminated, the court must make "such other provision" for the probationer as it deems appropriate. 18 U.S.C. § 3651.

C. Fines

The maximum fine that may be imposed is set forth in the statute defining the crime. A fine may be imposed either alone or in addition to imprisonment.

## D. Probation

### 1. When available

Probation may be used for a defendant convicted of any offense not punishable by death or life imprisonment. It may be granted whether the offense is punishable by fine, imprisonment, or both. 18 U.S.C. § 3651.

If the offense is punishable by both fine and imprisonment, the judge may impose a fine and place the defendant on probation as to imprisonment, thereby combining probation with a fine. Id.

Probation cannot normally be combined with imprisonment. But:

> "Mixed sentence": Upon a conviction on multiple counts, the court may impose imprisonment on one or more counts, followed by probation on one or more others. For this reason, some judges generally refuse to accept a guilty plea to one count of a multiple-count indictment; they insist on a plea to two counts to give them greater latitude in sentencing.
>
> "Split sentence": Upon a conviction on one or more counts, the court may impose a sentence of imprisonment for more than six months, and provide that the defendant be confined for a stated period which is six months or less, and be placed on probation with respect to the remainder of the sentence. 18 U.S.C. § 3651. This authority is limited to offenses punishable by imprisonment for more than six months but not punishable by death or life imprisonment.

### 2. How imposed

The court may suspend imposition of sentence and place the defendant on probation. If probation is revoked, the court then has the full range of sentencing options.

The court may impose a sentence of imprisonment and/or fine, suspend execution of the sentence, and place the defendant on probation. If probation is revoked, the court may reduce--but not increase--the sentence imposed. See Fed. R. Crim. P. 35.

### 3. Duration

The term of probation may not exceed five years. 18 U.S.C. § 3651. It has been held that consecutive terms may

not be used to go beyond this limit. E.g., Fox v. United States, 354 F.2d 752 (10th Cir. 1965).

The term of probation is not limited by the maximum term of imprisonment for the offense. Five years' probation may be given for an offense punishable by six months' imprisonment. After placing an offender on probation, the court retains discretion to modify the term. 18 U.S.C. § 3651.

If probation is revoked, time spent on probation is not credited as service against a term of imprisonment.

4. Probation conditions

Probation is "upon such terms and conditions as the court deems best." 18 U.S.C. § 3651.

Probation may be supervised or unsupervised. If supervised, the frequency of reporting to the probation officer will generally depend upon probation office assessment of the likelihood of violation.

Conditions specifically authorized by statute (18 U.S.C. § 3651) are:

Residence in a halfway house or participation in its programs. (See above.)

Participation in a drug program.

Payment of a fine that has been imposed.

Support of persons for whose support the offender is legally responsible.

Restitution or reparation. It must be to people actually injured by the offense for actual damage or loss sustained. See United States v. Clovis Retail Liquor Dealers Trade Ass'n, 540 F.2d 1389 (10th Cir. 1976).

Probation offices must generally rely on local resources. Offices have no funds for providing job training, medical care, etc. Halfway houses and drug programs are exceptions; they are supported by the Bureau of Prisons and the Probation Division, respectively.

# III. "GOOD TIME"

## A. Function

"Good time," awarded by the Bureau of Prisons, has the effect of reducing the stated term of the sentence--that is, it advances the date as of which release will be mandatory if the offender is not earlier paroled.

The award of good time does not in itself advance the offender's release date. It has that effect only if the offender would not otherwise be paroled before the mandatory date.

The behavior for which good time is awarded may also be considered by the Parole Commission in setting a parole date. That is not always done, however. Even when it is, the extent of the benefit to the offender may not be equivalent to the good time earned.

## B. "Statutory good time"

Under 18 U.S.C. § 4161, an offender sentenced to a definite term of six months or more is entitled to a deduction from his term, computed as follows, if the offender has faithfully observed the rules of the institution and has not been disciplined:

| Sentence Length | Good Time |
|---|---|
| At least 6 months, not more than 1 year | 5 days for each month of the stated sentence |
| More than 1 year, less than 3 years | 6 days for each month of the stated sentence |
| At least 3 years, less than 5 years | 7 days for each month of the stated sentence |
| At least 5 years, less than 10 years | 8 days for each month of the stated sentence |
| 10 years or more | 10 days for each month of the stated sentence |

At the beginning of a prisoner's sentence, the full amount of statutory good time is credited, subject to forfeiture if the prisoner commits disciplinary infractions.

If the sentence is for five years or longer, 18 U.S.C. § 4206(d) requires the Parole Commission to release an of-

fender after he has served two-thirds of the sentence unless the Commission determines that he has seriously or frequently violated institution rules or regulations or that there is a reasonable possibility that he will commit a crime. For offenders serving sentences of five to ten years, this provision may mandate release materially before the date established by subtracting statutory good time from the sentence.

Statutory good time does not apply to life sentences or to sentences under the Youth Corrections Act. It applies to a split sentence if the period of confinement is exactly six months; a shorter period does not qualify for good time under the statute, and a longer period cannot be part of a split sentence.

C. "Extra good time"

Under 18 U.S.C. § 4162, prisoners may be awarded good time, in addition to statutory good time, for employment in an industry or camp or for performing exceptionally meritorious service or duties of outstanding importance. Bureau of Prisons regulations provide that extra good time is awarded automatically to inmates working in prison industries, those assigned to camps or community treatment centers, and those participating in work or study release programs. It is awarded on a discretionary basis for exceptionally meritorious service in work assignments or for performing duties of outstanding importance. It is not used to reward participation in education or training programs. Extra good time is awarded at the rate of three days per month of eligible service for the first year of such service, and at the rate of five days per month thereafter. These are aggregate limits; they apply even if the inmate qualifies for two types of extra good time. 28 C.F.R. pt. 523.

Lump sum awards of extra good time are also used to reward exceptional acts. 28 C.F.R. § 523.16.

Extra good time does not apply to sentences under the Youth Corrections Act. 28 C.F.R. § 523.17(k).

# IV. DETERMINING THE DATE OF RELEASE FROM INCARCERATION--ADULT SENTENCES OF A YEAR AND A DAY OR MORE

## A. Parole Commission Procedures

### 1. Initial hearing

An initial parole hearing is normally held within 120 days of an offender's arrival at a Bureau of Prisons institution. Following the initial hearing, a presumptive date of release is established. 28 C.F.R. § 2.12. (The Parole Commission rules are reproduced as appendix C, beginning at page 49.)

#### Exceptions

If the parole eligibility date is ten years from the beginning of service of the sentence pursuant to 18 U.S.C. § 4205(a), the initial hearing is not held until shortly before the eligibility date. 28 C.F.R. § 2.12(a).

If the offender delays applying for parole, the initial hearing will be commensurately delayed. 28 C.F.R. § 2.11(a)-(c).

If the Commission concludes that release within ten years of the initial hearing is not warranted, it will not establish a presumptive date. At the end of ten years, a "reconsideration hearing"--similar to an initial hearing--will be held. 28 C.F.R. §§ 2.12, 2.14(c).

### 2. Interim hearings

Interim hearings are held from time to time to consider significant developments or changes in status occurring after the initial hearing. Presumptive release dates may be retarded on account of disciplinary infractions. Presumptive release dates and the dates of ten-year reconsideration hearings may also be advanced. However, it is Commission policy that, once set, a presumptive release date shall be advanced only for superior program achievement or other clearly exceptional circumstances. 28 C.F.R. § 2.14(a)(2)(ii).

For offenders serving sentences (including the sum of consecutive sentences) of less than seven years, interim hearings are held at eighteen-month intervals; for those serving sentences of seven years or more, at twenty-four-month intervals. However, the first interim hearing will

not be held earlier than the docket immediately preceding the parole eligibility date. 28 C.F.R. § 2.14(a)(1).

3. Pre-release review

Shortly before a presumptive parole date, a review of the record is conducted to determine whether there has been continued good conduct and whether the prisoner has submitted a satisfactory release plan. The Regional Commissioner has a limited authority to change the release date without a further hearing or pending a hearing. 28 C.F.R. § 2.14(b).

B. Criteria for release decisions

1. General

To the extent permitted by the sentence, the Parole Commission uses its own criteria for determining the appropriate length of incarceration. The Commission may be prevented from using those criteria by the term of the sentence (less good time) or the parole eligibility date. Even in these cases, the Parole Commission will adhere to its own criteria as closely as possible. Some offenders will accordingly be released on their parole eligibility dates. Others will not be released until their mandatory release dates, even assuming exemplary conduct.

Guidelines setting forth the "customary time to be served" have been issued by the Commission for the guidance of Commission personnel in making release decisions. These guidelines assume good conduct by the prisoner while incarcerated.

The guidelines are based on the severity of the offense and an estimate of the likelihood that the offender would violate parole if released. Examiners have considerable discretion to choose a period of incarceration within the guideline range as well as discretion to depart from the guidelines, with statements of reasons, if the circumstances of the particular case warrant departure.

The guidelines are published on the following pages. It will be noted that they generally suggest shorter ranges of time to be served for youth than for adults. For offenders who were under 22 at the time the offense was committed, the youth guidelines are applicable even if the offender is sentenced as an adult. 28 C.F.R. § 2.20(h)(2). This reflects a 1979 policy change; the youth guidelines formerly applied only if the offender was sentenced under the Youth Corrections Act.

GUIDELINES FOR DECISION-MAKING

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

| OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples) | OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score) | | | |
|---|---|---|---|---|
| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
| LOW | | | | |
| Alcohol or Cigarette law violations, including tax evasion (amount of tax evaded less than $2,000)[1] | ADULT RANGE | | | |
| Gambling law violations (no managerial or proprietary interest) | <=6 months | 6-9 months | 9-12 months | 12-16 months |
| Illicit drugs, simple possession | | | | |
| Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)] | (YOUTH RANGE) | | | |
| | ( <=6) months | (6-9 ) months | (9-12) months | (12-16) months |
| Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000 | | | | |
| LOW MODERATE | | | | |
| Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000] | | | | |
| Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)] | ADULT RANGE | | | |
| | <=8 months | 8-12 months | 12-16 months | 16-22 months |
| Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana / 1-4.9 lbs. of hashish / .01-.04 liters of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)] | | | | |
| Gambling law violations - managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)] | (YOUTH RANGE) | | | |
| | ( <=8) months | (8-12) months | (12-16) months | (16-20) months |
| Immigration law violations | | | | |
| Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000 | | | | |
| MODERATE | | | | |
| Automobile theft (3 cars or less involved and total value does not exceed $19,999)[2] | ADULT RANGE | | | |
| Counterfeit currency or other medium of exchange [(passing/possession) $2,000 - $19,999] | 10-14 months | 14-18 months | 18-24 months | 24-32 months |
| Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)] | (YOUTH RANGE) | | | |
| Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana / 5-19.9 lbs. of hashish / .05-.19 liters of hash oil)] | (8-12) months | (12-16) months | (16-20) months | (20-26) months |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| MODERATE (continued) | | | | |
| Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)] | | | | |
| Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)] | | ADULT RANGE | | |
| Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun) | 10-14 months | 14-18 months | 18-24 months | 24-32 months |
| Gambling law violations - managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000-$15,000); Horse books (estimated daily gross $1,500-$4,000); Numbers bankers (estimated daily gross $750-$2,000)] | | (YOUTH RANGE) | | |
| Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000-$19,999 | (8-12) months | (12-16) months | (16-20) months | (20-26) months |
| Smuggling/transporting of alien(s) | | | | |
| HIGH | | | | |
| Carnal Knowledge[3/] | | | | |
| Counterfeit currency or other medium of exchange [(passing/possession) $20,000 - $100,000] | | | | |
| Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)] | | ADULT RANGE | | |
| Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)] | 14-20 months | 20-26 months | 26-34 months | 34-44 months |
| Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana / 20-199 lbs. of hashish / .20-1.99 liters of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)] | | | | |
| Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate] | | (YOUTH RANGE) | | |
| Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) | (12-16) months | (16-20) months | (20-26) months | (26-32) months |
| Gambling law violations - managerial or proprietary interest in large scale operation (e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000)] | | | | |
| Involuntary manslaughter (e.g., negligent homicide) | | | | |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| HIGH (continued) | | | | |
| Mann Act (no force - commercial purposes) | | ADULT RANGE | | |
| Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000 - $100,000 | 14-20 months | 20-26 months | 26-34 months | 34-44 months |
| | | (YOUTH RANGE) | | |
| Threatening communications (e.g., mail/phone) - not for purposes of extortion and no other overt act | (12-16) months | (16-20) months | (20-26) months | (26-32) months |
| VERY HIGH | | | | |
| Robbery (1 or 2 instances) | | | | |
| Breaking and entering - armory with intent to steal weapons | | | | |
| Breaking and entering/burglary - residence; or breaking and entering of other premises with hostile confrontation with victim | | | | |
| Counterfeit currency or other medium of exchange [(passing/possession/ manufacturing) - amount more than $100,000 but not exceeding $500,000] | | ADULT RANGE | | |
| Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I] | 24-36 months | 36-48 months | 48-60 months | 60-72 months |
| Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana / 200 lbs. or more of hashish / 2 liters or more of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I] | | | | |
| Opiates, possession with intent to distribute/sale [medium scale or more (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) except as described in Greatest I] | | (YOUTH RANGE) | | |
| Extortion [threat of physical harm (to person or property)] | (20-26) months | (26-32) months | (32-40) months | (40-48) months |
| Explosives, possession/transportation | | | | |
| Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000 | | | | |
| GREATEST I | | | | |
| Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention) | | ADULT RANGE | | |
| | 40-52 months | 52-64 months | 64-78 months | 78-100 months |
| Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied) - no serious injury occurred] | | (YOUTH RANGE) | | |
| | (30-40) months | (40-50) months | (50-60) months | (60-76) months |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| GREATEST I (continued) | | | | |
| Drugs (other than specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)] | ADULT RANGE | | | |
| Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)] | 40-52 months | 52-64 months | 64-78 months | 78-100 months |
| Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)] | | | | |
| Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving to a secluded location, and releasing victim unharmed)] | (YOUTH RANGE) | | | |
| | (30-40) months | (40-50) months | (50-60) months | (60-76) months |
| Robbery (3 or 4 instances) | | | | |
| Sex act- force (e.g., forcible rape or Mann Act (force)] | | | | |
| Voluntary manslaughter (unlawful killing of a human being without malice; sudden quarrel or heat of passion) | | | | |
| GREATEST II | | | | |
| Murder | ADULT RANGE | | | |
| Aggravated felony - serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim | 52+ months | 64+ months | 78+ months | 100+ months |
| | (YOUTH RANGE) | | | |
| Aircraft hijacking | (40+ ) | (50+ ) | (60+ ) | (76+ ) |
| Espionage | months | months | months | months |
| Kidnapping (for ransom or terrorism; as hostage; or harm to victim) | Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category. | | | |
| Treason | | | | |

## GENERAL NOTES

A. These guidelines are predicated upon good institutional conduct and program performance.

B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

D. If an offense behavior involved multiple separate offenses, the severity level may be increased.

E. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

## OTHER OFFENSES

(1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.

(2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to $2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.

(3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.

(4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than $20,000 in value); and shall be rated as no less than high severity in any other case. In the case of a bribe/demand with a value in excess of $100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

(5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.

(6) Misprision of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

(7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

## REFERENCED NOTES

1. Alcohol or cigarette tax law violations involving $2,000 or more of evaded tax shall be treated as a property offense (tax evasion).

2. Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than $19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity.

3. Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

## DEFINITIONS

a. 'Other media of exchange' include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.

b. 'Drugs, other than specifically categorized' include, but are not limited to, the following, listed in ascending order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phencyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated towards the bottom of the guideline range and PCP will normally be rated towards the top).

c. 'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.

d. The 'opiate' category includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

e. Managerial/Proprietary Interest (Large Scale Drug Offenses):

Managerial/proprietary interest in large scale drug cases is defined to include offenders who sell or negotiate to sell such drugs; or who have decision-making authority concerning the distribution/sale, importation, cutting, or manufacture of such drugs; or who finance such operations. Cases to be excluded are peripherally involved offenders without any decision-making authority (e.g., a person hired merely as a courier).

2. Severity of offense

The Commission's offense severity categories are listed in the guideline table.

In determining the severity classification, the Commission refers to "offense behavior"--that is, the conduct that brought the offender into contact with the law--rather than to the offense of conviction. It takes into account "any substantial information available," and resolves disputed issues by a preponderance standard; however, charges upon which a prisoner was found not guilty after trial are not considered "unless reliable information is presented that was not introduced into evidence at such trial." 28 C.F.R. § 2.19(c).

A Commission statement of the rationale for this practice is reproduced as appendix A, at page 43. In it, the Commission notes that many convictions are a result of plea agreements that result in dismissal of charges supported by persuasive evidence, and that in some cases jurisdictional reasons prevent federal prosecution for the most serious offense (as where a robber is prosecuted for interstate transportation of stolen goods). It argues that consideration of "reliable information about the actual criminal transaction" is essential to responsible consideration of the "nature and circumstances of the offense," as required by 18 U.S.C. § 4206(a).

For offenses not listed in the guidelines, examiners are enjoined to find "the proper category . . . by comparing the severity of the offense behavior with those of similar offense behaviors listed." General Note B to the Guidelines.

3. Likelihood of success on parole

Likelihood of success on parole is determined through the "salient factor score." That score determines which column in the guideline matrix is to be used to find the guideline for the particular offender. The method of determining the salient factor score is indicated on the worksheet on the following page. Instructions for completing the worksheet are found in the Commission's "Guideline Application Manual," which is available in probation offices.

The salient factor score is based entirely on information about the offender that antedates incarceration on the present charge. The Commission has concluded, on the basis of empirical studies, that behavior while imprisoned is not a good statistical predictor of parole success. The Commission thus does not attempt to determine when an offender is "ready" for release in the sense of having been

SALIENT FACTOR SCORE

Register Number_____ Name_____

Item A----------
No prior convictions (adult or juvenile) = 3
One prior conviction = 2
Two or three prior convictions = 1
Four or more prior convictions = 0

Item B----------
No prior commitments (adult or juvenile) = 2
One or two prior commitments = 1
Three or more prior commitments = 0

Item C----------
Age at behavior leading to first commitment
(adult or juvenile):
26 or older = 2
18-25 = 1
17 or younger = 0

*Item D----------
Commitment offense did not involve auto theft or
check(s) (forgery/larceny) = 1
Commitment offense involved auto theft [X], or
check(s) [Y], or both [Z] = 0

*Item E----------
Never had parole revoked or been committed for a
new offense while on parole, and not a probation
violator this time = 1
Has had parole revoked or been committed for a new
offense while on parole [X], or is a probation vio-
lator this time [Y], or both [Z] = 0

Item F----------
No history of heroin or opiate dependence = 1
Otherwise = 0

Item G----------
Verified employment (or full-time school attendance)
for a total of at least 6 months during the last 2
years in the community = 1
Otherwise = 0

TOTAL SCORE----------

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as if a conviction, even if a conviction is not formally entered.

*NOTE TO EXAMINERS:
If Item D and/or E is scored 0, place the appropriate letter (X, Y or Z) on the line to the right of the box.

rehabilitated. The rationale for using the salient factor score is essentially incapacitative: higher-risk offenders are incarcerated longer not because it is thought that longer incarceration will change their risk status, but because it will reduce the opportunities for further criminal conduct.

4. Disciplinary infractions

In establishing a presumptive release date at initial hearings, good institutional conduct for the remainder of the term is presumed. Thereafter, at interim hearings, a presumptive date may be set back because of disciplinary infractions.

Infractions of admininstrative rules are generally thought to warrant a delay in release of not more than sixty days per instance of misconduct. New criminal conduct (including escape) is sanctioned more severely. 28 C.F.R. § 2.36.

Although the notes to the guidelines state that their applicability is predicated on "good . . . program performance" as well as good conduct, the regulations apparently do not permit a presumptive release date to be set back on account of disappointing program performance, such as failure to complete an educational program.

5. Exceptional conduct or superior program performance

Regulations that took effect November 1, 1979, permit a limited advancement of the presumptive release date for "sustained superior program achievement over a period of 9 months or more." 28 C.F.R. § 2.60. They indicate that this could be achievement in prison industries or in educational, vocational training, or counseling programs. The maximum reduction in a prisoner's time served, on account of one or more concessions for superior program achievement, is set forth in the regulations. Some examples of these maximums are as follows:

| If time of service until presumptive release date established at initial hearing is | Maximum reduction in time is |
|---|---|
| 2 years | 2 months |
| 3 years | 3 months |
| 5 years | 7 months |
| 10 years | 17 months |

What constitutes "superior program achievement" is left to be worked out case by case, as is the amount of time within

the maximum that is to be awarded for any particular achievement. It should be noted, however, that the standards are clearly not the same as those used to determine whether an inmate will be awarded extra good time.

The Commission's statement accompanying the 1979 regulations characterized the incentives as "relatively small." 44 Fed. Reg. 55,003 (1979). Nevertheless, they appear to represent an important modification of the Commission's previous policy of favoring early establishment of a definite, known release date for almost all inmates who did not violate institutional rules.

6. Other considerations

The date of a prisoner's parole may also be influenced by such matters as cooperation with the prosecution, inmates' medical problems, and the relationship between the sentence on the current offense and other state or Federal sentences that may run consecutively. U.S. Parole Commission, Procedures Manual, p. 88 (Feb. 1, 1980).

## V. DURATION OF PAROLE SUPERVISION; EFFECT OF REVOCATION--ADULT SENTENCES OF A YEAR AND A DAY OR MORE

### A. Limits on Parole Commission discretion

Supervision of an inmate released mandatorily--that is, incarcerated until the expiration of his sentence less good time--must terminate 180 days before the expiration of his sentence. 18 U.S.C. § 4164.

Supervision of an inmate released by action of the Parole Commission may continue until the expiration of his sentence. However, the Commission is required to terminate supervision five years after release unless it determines, after a hearing, that such supervision should not be terminated because there is a likelihood that the parolee will engage in criminal conduct. 18 U.S.C. § 4211(c).

The Commission may terminate supervision at any time. It is required to review each case periodically to determine the need for continued supervision. 18 U.S.C. § 4211(a), (b).

### B. Guidelines for early termination of supervison

Supervision of parolees with "very good" salient factor scores (9, 10, or 11) will normally be terminated after two years of supervision.

Supervision of parolees with lower salient factor scores will normally be terminated after three years of supervision.

In both cases, it is assumed that the parolee has not engaged in new criminal behavior or committed a serious parole violation. 28 C.F.R. § 2.43(c).

### C. Revocation of parole

If parole is revoked, "street time" normally counts as if it were time served in prison. 18 U.S.C. § 4210(b).

Exceptions:

> If the parolee has absconded or intentionally refused to comply with a Commission order, street time may be forfeited in an amount equal to the time during which the parolee was in noncompliance. 18 U.S.C. § 4210(c); 28 C.F.R. § 2.52(c)(1).

> If the parolee has been convicted of an offense committed while on parole, and such an offense is punishable by imprisonment, all street time is forfeited. 28 C.F.R. § 2.52(c)(2). The Commission then determines whether the remaining time is to be served concurrently or consecutively with the new sentence. 18 U.S.C. § 4211(b)(2).

Revocation does not imply that the remainder of the sentence will be served in prison. Policies for reparole are set forth at 28 C.F.R. § 2.21.

D. Special parole terms under title 21

Sections 841 and 845 of title 21, U.S. Code, require that judges impose "special parole terms" on defendants convicted of certain narcotics offenses. A special parole term is a period of parole supervision that follows the termination of supervision under the regular sentence. If special parole is revoked, the parolee may be committed for the duration of the special term. Although 21 U.S.C. § 841(c) states that the parolee will not receive credit for street time, the Commission views this provision as superseded by the subsequently enacted 18 U.S.C. § 4210(b).

The Commission considers the special parole term to be separate from the regular sentence, to begin immediately upon termination of supervision under the regular sentence or, if the prisoner is released without supervision, upon such release. Hence--

> If parole on the regular sentence is revoked, the maximum amount of time to be served on revocation is limited by the term of the regular sentence and is not affected by the special parole term. 28 C.F.R. § 2.57(c).

> If the Commission terminates supervision under the original sentence pursuant to its authority to terminate supervision early, the guidelines for termination of supervision will apply anew to the special parole term, generally requiring another two or three years of supervision. 28 C.F.R. § 2.57(e).

## VI. DETERMINING THE DATE OF RELEASE FROM INCARCERATION AND THE DURATION OF SUPERVISION--SENTENCES OF ONE YEAR OR LESS

The following table summarizes the alternatives available in sentencing an offender to a term of imprisonment of one year or less:

| Formal Sentence | Actual Time in Confinement | Post-Release Supervision |
|---|---|---|
| "Regular" sentence: X months' imprisonment | Stated sentence less "good time" | None |
| "Split" sentence: X months' imprisonment, the defendant to be confined for Y months and the remainder of the term to be suspended, followed by Z years' probation. Unsuspended portion of prison term cannot exceed 6 months. (18 U.S.C. § 3651) | The unsuspended portion of the prison term, less "good time" | Up to 5 years, as specified by court |
| Sentence with release "as if on parole": X months, provided that the offender shall be released as if on parole after Y months. Stated sentence must be at least 6 months; it is unclear whether release date must be at one-third of stated sentence or may be later. (18 U.S.C. § 4205(f)) | Until specified release date (unless subtracting "good time" from stated sentence requires earlier release) | Until expiration of stated sentence |

NOTE ON "GOOD TIME"

Statutory good time is earned only if the sentence is for six months or more (or the unsuspended portion of a split sentence is exactly six months). On sentences of a year or less, statutory good time is five days for each month of sentence, and the maximum extra good time that can be earned is three days for each month of service.

## VII. ASSIGNMENT TO AN INSTITUTION

### A. General

The Bureau of Prisons classifies institutions into six security categories. Basic policy is to assign inmates to the least restrictive security category consistent with adequate supervision.

### B. Initial assignments

The security level of the institution to which an inmate is initially assigned is determined under guidelines on the basis of the severity of the current offense, the expected length of incarceration, the severity of charges on which any detainers are based, the severity of offenses resulting in previous imprisonment, history of violence, history of escapes, and status before commitment (whether released on recognizance or a voluntary surrender case). In estimating length of incarceration, the Bureau of Prisons begins with the length of the sentence, and then applies a percentage factor to take account of the fact that people are generally released before serving their full terms. The judge's stated sentence thus has some impact on the inmate's original security classification, and differences in sentences could produce different security classifications. Sentence length is not the major factor, however. U.S. Bureau of Prisons, Program Statement 5100.1, §§ 8, 9 (July 14, 1980).

A variety of other considerations also influence the institution to which an offender is sent. One of them is the proximity of the institution to the offender's home. However, the nearest institution of the appropriate security category is often a substantial distance from the home community. Some considerations (such as medical problems) may override the security classification, but proximity to the offender's home does not.

Bureau of Prisons regulations indicate that a judicial recommendation that an inmate be assigned to a specific institution or a particular kind of program will generally not override the security classification, but that every effort will be made to follow such recommendations where consistent with the security classification. Id. § 9, at 5. In practice, the Bureau may be even more accommodating than the regulations suggest.

Age is not a major factor in assignments. Although the Bureau once confined younger offenders in separate institutions, it no longer does.

Offenders may also be placed in non-federal facilities. Generally, these are used only for women and for men serving sentences of sixty days or under, but there are several exceptions to the sixty-day limit for men. Id. § 7, at 1-2.

Offenders are initially assigned to community treatment centers only upon a judge's request. Id. § 9, at 5. In the absence of such a request, an offender is likely to be assigned to such a center only for the last few months before release.

C. Transfers

Following initial placement, the appropriate security category is reviewed from time to time. The review takes account of changes in the information used to make the initial security classification; in particular, the inmate's expected duration of incarceration is recalculated on the basis of Parole Commission action. It also takes account of behavior while incarcerated. Id. §§ 10, 11.

Transfers within the system are also made for a variety of reasons other than changes in the security level.

D. Voluntary surrender procedure

An offender remanded to custody immediately upon sentencing is likely to spend several days in a local facility before being transported by the Marshals Service to the institution of initial assignment, and may also spend time in other local jails in the course of transportation. Time spent in local jails is often traumatic, particularly for offenders experiencing their first commitment. Hence, a "voluntary surrender" procedure has been developed, under which the offender may travel unaccompanied to the designated institution, and present himself there for service of sentence.

Use of this procedure is entirely within the discretion of the court. If voluntary surrender is ordered, subsistence and transportation expenses are normally paid by the offender. However, an offender without sufficient funds may petition the court for an order directing the marshal to pay such expenses. Memorandum of Rowland F. Kirks, Director, Administrative Office of the U.S. Courts, Sept. 26, 1974.

# VIII. SPECIAL SENTENCES FOR YOUNG OFFENDERS

## A. Applicability and purpose of Youth Corrections Act

An offender who is under 26 years of age may be sentenced either under the Youth Corrections Act or under the authorities discussed in the preceding sections.* If the offender is sentenced as an adult, all of the rules and policies previously stated will apply.

The most important characteristic of the Youth Corrections Act is that it is the product of a time (1950) at which there was much greater optimism than exists today about the possibility of changing behavior patterns of young offenders. The act contemplated that offenders would be committed for "treatment," 18 U.S.C. § 5010(b), (c), which was defined as "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders," 18 U.S.C. § 5006(f). After commitment, a complete study of the offender was to be conducted, resulting in recommendations for treatment. 18 U.S.C. § 5014. The Bureau of Prisons was to provide such treatment, insofar as practical, in institutions used only for treatment of offenders committed under the act. 18 U.S.C. § 5011. Parole authorities were to release the youth when his antisocial tendencies had been corrected. Testimony of James V. Bennett, Director, U.S. Bureau of Prisons, quoted in Durst v. United States, 434 U.S. 542, 546-47 n.7 (1978).

Correctional philosophy today is generally in conflict with the medical analogy on which the statute was based. Few authorities believe that it is possible to diagnose an offender and determine the appropriate "treatment"; few believe that it is possible to identify the time at which antisocial tendencies have been corrected. Hence, many of the policies described below are not in harmony with the statutory purpose. The provisions governing release were amended by the Parole Commission and Reorganization Act of 1976 to indicate that youth offenders are to be released pursuant to the same general criteria as others, 18 U.S.C. § 4206, but much of the original statutory language remains unchanged and suggests that sentences under the act will have consequences that in fact will not result.

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*It is assumed that the offender has been convicted in a criminal proceeding. This paper does not deal with proceedings under the Federal Juvenile Delinquency Act.

B. Sentencing options

1. Adult sentences

Any sentence that may be given to an adult may also be given to a youth.

If the offender is under 22 at the "time of conviction " an adult sentence may be given only if the court finds that "the youth offender will not derive benefit from treatment under" the commitment provisions of the Youth Corrections Act. 18 U.S.C. § 5010(d).

If the offender is at least 22 but not yet 26 at the "time of conviction," the adult sentence is assumed to be the norm. 18 U.S.C. § 4216 merely permits use of the Youth Corrections Act if "the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under" the act.

There is less than meets the eye, however, to the distinction between those under 22 and those who are at least 22 but not yet 26. In the case of an offender under 22, the "no benefit" statement must be made on the record to indicate that the court has considered and rejected a Youth Corrections Act sentence; however, the requirement of a "no benefit" finding does not impose a substantive limitation on the court's discretion to select another sentence. Dorszynski v. United States, 418 U.S. 424, 441-43 (1974).

The term "conviction" is defined in the Youth Corrections Act as "the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere." 18 U.S.C. § 5006(g). The time of the judgment in a criminal case is generally understood to be the time of sentencing, so a literal reading of the statute would make the sentencing date the critical date for determining the offender's age in applying the above rules. However, two courts of appeals, rejecting the literal reading, have held that the critical date is the date the verdict is rendered or the plea taken. Jenkins v. United States, 555 F.2d 1188 (4th Cir. 1977); United States v. Branic, 495 F.2d 1066 (D.C. Cir. 1974).

2. Imprisonment under the Youth Corrections Act

a. Authorities

The basic sentence of imprisonment under the Youth Corrections Act is the so-called indeterminate sentence under 18 U.S.C. § 5010(b). The offender is required to be released under supervision on or before the expiration of four years from the date of conviction, and to

be discharged unconditionally on or before the expiration of six years from such date.

The indeterminate sentence may be imposed even though the maximum term for an adult is less than six years. Nor does a district judge have the authority to impose a shorter term under the Youth Corrections Act. However, if sentence is being imposed by a United States magistrate, the indeterminate sentence may not exceed six months for conviction of a petty offense or one year for conviction of another misdemeanor. 18 U.S.C. § 3401(g)(1), as amended by Federal Magistrate Act of 1979, Pub. L. No. 96-82, § 7, 93 Stat. 643. The magistrate apparently may provide for an even shorter term. The offender is required to be released conditionally under supervision "no later than 3 months before the expiration of the term imposed by the magistrate." 18 U.S.C. § 3401(g)(2), as amended by Federal Magistrate Act of 1979, Pub. L. No. 96-82, § 7, 93 Stat. 643.

If the court finds that the youth offender may not be able to derive maximum benefit within six years, it may sentence him under 18 U.S.C. § 5010(c) to any longer term that does not exceed the maximum term for an adult for the same offense. In such a case, the youth offender is required to be released under supervision not later than two years from the expiration of the term. He may be discharged unconditionally any time after one year following conditional release, and must be disch rged unconditionally upon or before the expiration of the term.

Imprisonment under the act may be accompanied by a fine. Durst v. United States, 434 U.S. 542 (1978).

b. Conditions of incarceration

As was noted earlier, the Bureau of Prisons no longer maintains separate institutions for younger offenders. Younger offenders are assigned to the same institutions as older offenders, pursuant to a basic policy of assigning each offender to an institution of the lowest security level consistent with adequate supervision.

Unless they qualify for minimum custody institutions, offenders sentenced under the Youth Corrections Act are assigned to separate residential units within the institutions, and are assigned only to institutions that have such units. U.S. Bureau of Prisons, Program Statement 5100.1, § 9, at 3 (July 14, 1980). These YCA units have somewhat more assigned staff than other residential units, including more counseling staff.

The difference in the staffing of the residential units is the only difference today between "treatment under the Youth Corrections Act" and treatment under the regular sentencing authorities. Educational and vocational-training opportunities for YCA inmates do not differ from those offered to other inmates, whether youth or adults.

c. Determining the date of release from incarceration

The maximum period of incarceration is four years under 18 U.S.C. § 5010(b), and two years less than the term imposed under 18 U.S.C. § 5010(c). See 18 U.S.C. § 5017(c), (d). If the offender is sentenced by a United States magistrate, it is three months less than the term imposed. 18 U.S.C. § 3401(g)(2), as amended by Federal Magistrate Act of 1979, Pub. L. No. 96-82, § 7, 93 Stat. 643. Neither statutory good time nor extra good time can be earned by offenders sentenced under the Youth Corrections Act. Parole eligibility is immediate.

18 U.S.C. § 5017 provides that the above periods shall be computed from the "date of conviction," which the Bureau of Prisons interprets as the date of the sentence. Some exceptions have been carved out, however. When commencement of the sentence is delayed pending appeal, for example, the Bureau of Prisons computes the time from the date of beginning of service. See United States v. Frye, 302 F. Supp. 1291 (W.D. Tex.), aff'd, 417 F.2d 315 (5th Cir. 1969). On the other hand, offenders sentenced under the act are given credit for time spent in pretrial custody. See Ek v. United States, 308 F. Supp. 1155 (S.D.N.Y. 1969). If incarceration commences on revocation of probation, however, no exception is made: the time is computed continuously from

the date of sentencing, with the practical result that time spent on probation is credited as service on a Youth Corrections Act sentence. That is an important distinction between the Youth Corrections Act and the regular authority. The time on probation is credited even if imposition of sentence was originally suspended and the Youth Corrections Act sentence was imposed upon revocation of probation.

The Parole Commission uses the same procedures for offenders sentenced under the Youth Corrections Act as for other offenders, employing the guideline system. However, if an offender who was at least 22 at the time of the offense is sentenced under the Youth Corrections Act, the youth guidelines rather than the adult guidelines are used. As was previously noted, the youth guidelines are always used for an offender under 22 at the time of the offense, even if sentenced under adult authorities.

It should be observed that a sentence under the Youth Corrections Act confers greater discretion on the Parole Commission than a short or moderate adult sentence. The choice of a Youth Corrections Act sentence will cause the Commission to exercise its discretion more generously only in the case of an offender who was 22 or over at the time of the offense.

d. Duration of parole supervision

Parole Commission guidelines for early termination of supervision--"unconditional discharge" within the meaning of the Youth Corrections Act--are the same as those used for adult sentences. 28 C.F.R. § 2.43(c).

e. Certificate setting aside conviction

If the Youth Corrections Act offender is discharged unconditionally before the expiration of the maximum sentence, the conviction is automatically "set aside." 18 U.S.C. § 5021. For the effect of this provision, see the discussion of probation below.

3. Probation under the Youth Corrections Act

Probation under the Youth Corrections Act differs from adult probation in that it carries the possibility of receiving a certificate setting aside the conviction. Condi-

tions of probation, including fines and restitution, may be imposed as under adult probation. Durst v. United States, 434 U.S. 542 (1978).

18 U.S.C. § 5021(b) states that the court may, in its discretion, unconditionally discharge a youth offender from probation prior to the expiration of the probation term previously fixed, and that such discharge shall automatically set aside the conviction and a certificate to that effect will be issued.

Read literally, section 5021(b) would seem to apply to any offender placed on probation who was under 22 at the "time of conviction." However, the act has been interpreted to give the judge discretion to place the offender on either regular (adult) probation or Youth Corrections Act probation. United States v. Kurzyna, 485 F.2d 517 (2d. Cir. 1973), cert. denied, 415 U.S. 949 (1974).

Youth Corrections Act probation is presumably subject to the same five-year maximum as adult probation. However, if sentence is imposed by a United States magistrate, Youth Corrections Act probation is apparently limited to six months for conviction of a petty offense and one year for conviction of another misdemeanor. See 18 U.S.C. § 3401(g)(3), as amended by Federal Magistrate Act of 1979, Pub. L. No. 96-82, § 7, 93 Stat. 643.

There is an apparent conflict of circuits on the question whether "setting aside" the conviction has the effect of expunging it. Compare United States v. McMains, 540 F.2d 387 (8th Cir. 1976), and United States v. Doe, 556 F.2d 391 (6th Cir. 1977), with Doe v. Webster, 606 F.2d 1226 (D.C. Cir. 1979). In calculating the salient factor score, the Parole Commission considers convictions that have been set aside under this provision. U.S. Parole Commission, Procedures Manual, p. 89 (Feb. 1, 1980).

Upon revocation of probation, if the offender is imprisoned under the Youth Corrections Act, time spent on probation is credited as service on the sentence, as noted above.

4. Split sentences under the Youth Corrections Act

The Ninth Circuit has recently held that a split sentence may be imposed under the Youth Corrections Act. United States v. McDonald, 611 F.2d 1291 (9th Cir. 1980). It is not wholly clear whether parole eligibility would be immediate under such a sentence. Early termination of the probation component would presumably result in setting aside the conviction.

## IX. SPECIAL SENTENCES FOR NARCOTIC ADDICTS

### A. Applicability and purpose of Narcotic Addict Rehabilitation Act

Under 18 U.S.C. §§ 4251-55, certain narcotic addicts convicted of criminal offenses may be sentenced for treatment.* Eligible offenders exclude those whose conviction is for a crime of violence or for dealing in narcotics as well as those with certain prior records. 18 U.S.C. § 4251(f).

Sentences under the act are for an indeterminate period not to exceed ten years, but in no event for longer than the maximum sentence that could otherwise have been imposed. 18 U.S.C. § 4253(a). At any time after six months of treatment, the Attorney General may report to the Parole Commission as to whether the offender should be conditionally released under supervision. After receipt of the Attorney General's report, and certification from the Surgeon General that the offender has made sufficient progress to warrant conditional release, the Commission may order such release. 18 U.S.C. § 4254. The statute contemplates that drug treatment will continue in the community after the offender's conditional release. 18 U.S.C. § 4255.

Although the act reads as if NARA offenders would receive special rehabilitative treatment, this impression is largely erroneous. Bureau of Prisons policy today is to make drug treatment available to all offenders who need it, regardless of the authority under which they are sentenced. Policies governing release on parole are only slightly different for offenders sentenced under NARA than for others. And parolees with histories of addiction are generally required by the Parole Commission to participate in community drug treatment programs, again regardless of the authority under which they were sentenced. Hence, the experience of an offender sentenced under the Narcotic Addict Rehabilitation Act is generally quite similar to that of an addict sentenced under other statutory provisions.

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*It is assumed that the offender has been convicted in a criminal proceeding. This paper does not deal with civil commitments under 28 U.S.C. §§ 2901-06, under which certain addicted defendants may be given an opportunity for commitment to the custody of the Surgeon General on the understanding that prosecution will be dropped upon successful completion of the treatment program.

## B. Sentencing options

### 1. Adult or Youth Corrections Act sentences

Any sentence may be given to a narcotic addict that may be given to a convicted offender who is not an addict. Invocation of NARA is, at the first step, entirely discretionary. 18 U.S.C. § 4252. As is noted below, however, some discretion is lost once the first step in the statutory procedure has been taken.

### 2. NARA sentences

#### a. Sentencing procedures

If the court believes that an eligible offender is an addict, it may place him in the custody of the Attorney General for an examination "to determine whether he is an addict and is likely to be rehabilitated through treatment." 18 U.S.C. § 4252. The Attorney General is to report within thirty days or such additional period as is granted by the court. If, after receipt of the report, the court determines that the offender is an addict likely to be rehabilitated through treatment, a sentence under the act is mandatory. 18 U.S.C. § 4253(a). The decision to commit for an examination under 18 U.S.C. § 4252 may, therefore, be regarded as a decision to impose a NARA sentence subject to a subsequent factual determination.

The examination is directed at resolving two separate issues: first, whether the offender is addicted to a narcotic drug, and second, whether he is likely to be rehabilitated through treatment. In practice, if a defendant is found to be an addict, he will probably be found amenable to treatment unless there is strong ground to believe he would not receive any benefit from participation in drug programs.

A NARA sentence is for a period not to exceed ten years, or the maximum sentence that could have otherwise been imposed, whichever is shorter. 18 U.S.C. § 4253(a). It has been held by several appellate courts that the judge does not have discretion to give a shorter sentence under the act. United States v. Biggs, 595 F.2d 195 (4th Cir. 1979), and cases cited therein.

b. Conditions of incarceration

Special residential units for drug offenders are maintained at many Bureau of Prisons institutions. An inmate serving a sentence under the act must be assigned to such an institution and must initially be placed in such a unit. U.S. Bureau of Prisons, Program Statement 5330.5, ¶ 1080 (1979). There is somewhat greater flexibility for inmates sentenced under other authorities, but general policy is to place narcotic addicts in such units. Id. ¶ 1014.

After an orientation period in a drug abuse unit, an inmate is permitted to withdraw from the drug abuse program. However, an inmate sentenced under NARA will not receive release certification until the program has been satisfactorily completed. Id. ¶ 1080.

The drug programs involve a variety of activities. They include at least forty hours of orientation, including education about the effects of drugs, and a minimum of one hundred hours of counseling and/or psychotherapy. Id. ¶ 1000. Elapsed time required to complete participation in a program varies, but is commonly about two years. After addicts have satisfactorily completed the program--and, in the case of NARA offenders, received certification of completion--they may be moved out of the drug abuse units. Id. ¶ 1082.

c. Determining the date of release from incarceration

The maximum period of incarceration is the term of the sentence, less good time. An offender may be paroled following the completion of six months of treatment. 18 U.S.C. § 4254.

As noted above, 18 U.S.C. § 4254 contemplates a report from the Attorney General as to whether the offender should be conditionally released, and requires certification from the Surgeon General that the offender has made sufficient progress to warrant conditional release.

The authority of the Surgeon General to certify sufficient progress has been delegated to the Medical Director of the Bureau of Prisons and, through him, to drug abuse program mana-

gers in the institutions. U.S. Bureau of Prisons, Program Statement 5330.5, ¶ 1092 (1979). A certificate is issued upon successful completion of a drug abuse program. It does not generally represent a judgment that the addict is "cured".

The Parole Commission employs the guideline system for offenders sentenced under NARA as well as those sentenced under other statutes. For NARA offenders, it uses the same guidelines it uses for youth. Therefore, for an offender who was at least 22 at the time of the offense, a NARA sentence may call up a shorter guideline than an adult sentence. However, application of the guidelines will be subject to the receipt of a certificate of sufficient progress. Generally speaking, Bureau of Prisons staff makes an effort to enable the offender to complete the program in time to be released on the presumptive release date established by the Parole Commission. That is not always possible, however, if the guideline calls for relatively early release. Moreover, as was observed above, an inmate who fails to complete the drug program will not be certified.

d. Parole supervision

The duration of parole supervision for offenders sentenced under NARA is governed by the same rules that apply to offenders sentenced under the regular adult authorities. 28 C.F.R. § 2.43(c).

18 U.S.C. § 4255 authorizes the provision of "aftercare" services for NARA offenders while on parole. Parole Commission policy requires participation in treatment programs while on parole, "unless there are compelling reasons to the contrary," for NARA parolees and for all others determined to be addicted to narcotic drugs. U.S. Parole Commission, Procedures Manual, p. 16 (Feb. 1, 1980). Hence, the experience of a NARA offender on parole is generally very much the same as the experience of any other addict.

## X. THE USE OF OBSERVATION AND STUDY AS AN AID TO THE SENTENCING JUDGE

### A. Authorities

There are several authorities that may be used to have a convicted offender observed and studied, and a report made to the sentencing judge. These are as follows:

#### 1. Local studies

Funds are available through the probation office to have studies performed by local psychologists and psychiatrists. Probation offices are expected to maintain lists of people who are qualified and willing to do this work. Local studies often can take place in a less restrictive environment than studies performed by the Bureau of Prisons. Moreover, if the district of conviction is the defendant's home district, a local psychologist or psychiatrist, familiar with the environment in which the offender has lived, may be in a better position to make judgments about the offender. The Probation Division, the Bureau of Prisons, and the Parole Commission urged, in a joint statement issued in 1978, that studies be performed locally whenever feasible.

#### 2. Bureau of Prisons studies

18 U.S.C. § 4205(c) authorizes commitment for three months for study "if the court desires more detailed information as a basis for determining the sentence to be imposed."

18 U.S.C. § 5010(e) authorizes commitment for sixty days "if the court desires additional information as to whether a youth offender will derive benefit from treatment" under the commitment provisions of the Youth Corrections Act.

18 U.S.C. § 4252 authorizes commitment for thirty days to determine whether an offender "is an addict and is likely to be rehabilitated through treatment." This authority is limited to offenders who are eligible for sentencing under the Narcotic Addict Rehabilitation Act, and has been treated in the discussion of that act.

### B. Making the best use of studies

In ordering presentence studies, it is important that the letter referring the offender specify the questions the judge wants answered, so the person conducting the study can perform such tests as are suitable for answering those ques-

tions. When that is not done, judges often find that the study reports are not responsive to their sentencing concerns. Sample referral letters may be found in Farmer, Observation and Study, at 33-34 (Federal Judicial Center, 1977).

## XI. JUDICIAL COMMUNICATION WITH THE PAROLE COMMISSION AND THE BUREAU OF PRISONS

### A. General

There are a number of situations in which the experience of an offender after sentencing may be influenced by communication from the court to the Bureau of Prisons or the Parole Commission.

The Bureau of Prisons makes an effort to accommodate judges' requests about the types or locations of facilities in which offenders are incarcerated, as well as the kinds of programs to which they should be exposed, if the requests are consistent with the Bureau's determination of the appropriate security level for the offender. U.S. Bureau of Prisons, Program Statement 5100.1, § 9, at 5 (July 14, 1980). If the Bureau is unable to honor a judicial request, the staff will write the judge and explain that inability. As was noted earlier, it is Bureau policy not to make original designations to community treatment centers unless the judge specifically requests such a designation.

The Parole Commission is less likely than the Bureau of Prisons to adopt a judge's recommendation as a matter of deference, but is very much interested in perceptions and information that may influence Commission decisions. The following excerpt from the regulations expresses the Commission's position on this issue:

> "Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole." 28 C.F.R. § 2.19(d).

### B. Method of communication; limitations

Administrative Office Form 235, reproduced on the following page, was designed to facilitate and encourage com-

# REPORT ON SENTENCED OFFENDER BY UNITED STATES DISTRICT JUDGE

**To Be Completed by the Probation Officer:**

Name _____ FBI No.: _____ DOB: _____

District: _____ Offense: _____ Sentence: _____

**To Be Completed by the Sentencing Judge:**

**SENTENCING OBJECTIVES.** Court's intent or purpose for sentence imposed.

**COMMENTS ON TREATMENT NEEDS.** In the court's opinion what treatment or training should the Probation Office or the Bureau of Prisons provide? (e.g., vocational, educational, medical, alcoholic, narcotic.)

**RECOMMENDED INSTITUTION.** Type of institution by classification (e.g., penitentiary, youth center, etc.), or by name (e.g., Leavenworth, Morgantown, etc.).

**COMMENTS AND RECOMMENDATIONS RELATIVE TO PAROLE.** Give comments regarding the appropriateness of parole in view of the present offense, prior criminal background and any mitigating or aggravating circumstances.

**NO COMMENT** ☐ *This form will be disclosed to the offender and the Parole Commission in connection with parole consideration, unless the court directs otherwise. (See 18 U.S.C. 4208)*

*Original:* *U.S. Probation Office*
*Sentencing Judge*

*c.c.:* *2 copies to Bureau of Prisons institution designated for confinement*

*Signed* _____

*Typed* _____ *Date* _____

munication with the Bureau and the Commission. Letters and memoranda are equally acceptable. Remarks made orally in open court will not routinely reach the Bureau and the Commission; if the judge wishes his remarks to be acted upon, he must have them transcribed and transmit them.

It is not generally appropriate to communicate with the Parole Commission on a confidential basis. The Parole Commission Act, 18 U.S.C. § 4208(b), (c), requires that all materials considered by the Commission also be available to the offender, except that material may be withheld and summarized in the same circumstances in which a summary of information in a presentence report is permitted under rule 32(c)(3) of the Rules of Criminal Procedure. If a communication to the Commission includes material that should be withheld from the offender, it should be accompanied by a summary that is suitable for disclosure. 28 C.F.R. § 2.55(d).

It should be noted in this connection that presentence reports are routinely considered by the Parole Commission in reaching its decisions. They are disclosed to offenders personally even in cases in which the court has permitted disclosure only to counsel. The Court of Appeals for the District of Columbia Circuit has recently held that the Commission has the authority to determine whether information contained in a presentence report should be withheld and summarized under 18 U.S.C. § 4208(c), and that the Commission is not bound by the decisions of the trial court about the same report under rule 32(c)(3). Carson v. U.S. Department of Justice, Civ. No. 79-0140 (D.C. Cir. Aug. 27, 1980). This case also held that the presentence report is a Freedom of Information Act document in the hands of the Parole Commission, but did not reach the question whether any of that act's exemptions apply.

It remains possible to communicate with the Bureau of Prisons on a confidential basis. Such communications are not included in files that are available to other inmates performing clerical duties.

If a judge intends that a Form 235 or other communication not be part of the file that is made available to the offender in connection with parole consideration, that intention should be unambiguously and prominently expressed.

C. Appropriate matters for communication

Among the matters that appear to present appropriate circumstances for a communication from the judge to the Bureau of Prisons or the Parole Commission are the following:

Cases in which the "official version" of the criminal conduct, as set forth in the presentence report, is known to be at variance with the facts or is considered unreliable. In determining the severity of the "offense behavior," the Parole Commission may rely on this version.

Cases in which other information in the presentence report is either incorrect or of doubtful validity. Both the Bureau of Prisons and the Parole Commission rely heavily on information in the presentence report. If the judge has concluded that any of this information is not reliable, it is important that this conclusion be communicated.

Cases in which the judge has views about the offender's culpability, particularly cases in which the offender's culpability is thought to be less or greater than what might be inferred from the bare description of the offense behavior in the Commission's guidelines.

Cases in which the defendant has cooperated with the prosecution, but the cooperation is not reflected in the presentence report.

Cases in which the judge has views about what kind of institution an offender should serve in, or what kinds of programs he should be exposed to.

# APPENDIX A

## Parole Commission Statement on Use of "Offense Behavior"

(See reverse side)

**The Problem of Unadjudicated Offenses**

Some comments raised the issue of whether the Commission should, under any standard, consider aggravating circumstances about the prisoner's offense behavior when such circumstances may be legally defined as separate criminal offenses.

This situation occurs because prosecutors do not always obtain convictions upon all or the most serious offenses disclosed by the facts. This happens primarily because of plea bargaining. An average of 85 percent of all federal convictions are obtained by pleas, rather than by trials, and many of these pleas result in the dismissal of charges that are nonetheless supported by persuasive evidence.

Another reason for failure to convict on the most serious offense disclosed by the facts is jurisdictional; state charges are frequently dropped when federal prosecution is commenced for a less serious federal offense.

The problem is so common that the question is not simply whether the Commission should consider unadjudicated offense information in its decisions, but whether the Commission could afford to ignore such information and still fulfill the functions required of it by its enabling statute.

In the Commission's view, consideration of a wide scope of reliable information about the actual criminal transaction underlying the conviction is essential to a responsible paroling practice. Without such information, parole decisions would not reflect a realistic understanding either of the seriousness of the offense or of the relative danger that the offender's release may pose to the public safety. Moreover, serious disparities inherent in prosecutorial decisions would be unavoidably magnified by intolerably disparate parole decisions.

(a) *The Concern for Realism.*—If the Commission were to restrict its consideration to pleaded counts alone, it would frequently lack critical explanatory information about the "nature and circumstances of the offense," a consideration required by law: 18 U.S.C. 4206(a).

One frequently occurring prosecutorial practice is that of taking a plea to a lesser included charge, a practice that results in convicting the defendant for what is really a hypothetical behavior. A bank robber who kidnapped a teller may plead guilty to attempted robbery or bank larceny. See *Bistram* v. *U.S. Board of Parole*, 535 F.2d 329, 330 (5th Cir. 1976). An extortionist may plead guilty to a conspiracy to commit extortion. See *Billiteri* v. *U.S. Board of Parole*, 541 F.2d 438 (2d Cir. 1976). The Commission could not begin to treat such a plea as if it described a real event, for any available explanatory information would relate to the transaction that actually occurred.

In such cases as white collar crimes, the pleaded counts usually do not reflect anything near the actual dollar amounts involved, even though the nature of the unlawful behavior is established. Thus, in order to answer essential questions as to the amount of harm done and the scale of the offense, the Commission must look to information that was reflected in the dismissed counts. See *Manos* v. *U.S. Board of Parole*, 399 F. Supp. 1103 (M.D. Pa. 1975). These were obviously questions that the Congress thought proper for the Commission to ask. See 2 U.S. Code Cong. & Ad. News at 359 (1976).

(b) *The Concern for the Public Safety.*—Another consideration is what the offense behavior reveals about the offender himself, i.e., his likely motivation and characteristics. The need for realism in this regard is especially important in considering the degree to which the offender has shown himself capable of violent or dangerous behavior. One example of this would be a case in which the prisoner had been convicted of interstate transportation of stolen goods, not a particularly threatening type of behavior. However, the prisoner had originally been charged by local authorities with being the perpetrator of a robbery in which those goods were stolen. The robbery charge was dropped when the Federal conviction was obtained, even though there was "strongly probative" evidence of guilt. See *Lupo* v. *Norton*, 371 F. Supp. 156 (D. Conn. 1974). Likewise in *Narvaiz* v. *Day*, 444 F. Supp. 36 (W.D. Okla. 1977), information explaining the circumstances underlying a Firearms Act conviction disclosed behavior that amounted to extortion and kidnapping. The Commission could not conceivably ignore persuasive evidence that shows the prisoner to be a very different sort of release risk from that indicated by his plea.[2]

(c) *The Concern for Avoiding Disparity.*—Parole decision-making in both the federal and state systems also serves the function of preventing disparities in prosecutorial practices from being transferred to the highly visibly point at which the offender is finally released from prison.

It is unquestionable that significant disparities exist in the treatment of different types of offenders. For example, white collar offenders are more likely to strike a bargain to a lesser charge than bank robbers. Disparities also exist in the handling of similarly situated offenders. Depending upon local prosecutorial practices and caseloads, some offenders will be able to strike a favorable bargain while others will be brought to trial on all charges.

The criminal justice system has become dependent upon the sentencing judge and the parole authority to bring some measure of realism and consistency to criminal punishments. If they were not able to do so, the terms of the plea agreement would to a great extent predetermine the sentence. This would place in the hands of prosecutors a far greater degree of influence over sentencing and parole choices than they now possess, a transfer of discretionary authority that would not be acceptable. (Guidelines for prosecutorial discretion may be one way of ameliorating the present situation, if such guidelines made it more difficult for prosecutors to drop serious charges unless they had genuine doubts about the supporting evidence.)

[2] The Commission agrees with the reasoning of the Supreme Court in *Williams* v. *New York*, 337 U.S. 241 (1949), in which the Court permitted sentencing judges to consider unadjudicated offense information.

APPENDIX B

Excerpt from H. Rept. 94-838 (1976), pp. 19-21.

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5727) to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommend in the accompanying conference report:

Nearly all men and women sent to prison as law breakers are eventually released, and the decision as to when they are released is shared by the three branches of government. Wrapped up in the decision to release an individual from incarceration are all of the emotions and fears of both the individual and society.

Parole may be a greater or lesser factor in the decision to release a criminal offender. It depends upon the importance of parole in the complex of criminal justice institutions. In the Federal system, parole is a key factor because most Federal prisoners become eligible for parole, and approximately 35 per cent of all Federal offenders who are released, are released on parole. Because of the scope of authority conferred upon the Parole Board, its responsibilities are great.

From an historical perspective, parole originated as a form of clemency; to mitigate unusually harsh sentences, or to reward prison inmates for their exemplary behavior while incarcerated. Parole today, however, has taken a much broader goal in correctional policy, fulfilling different specific objectives of the correctional system. The sentences of nearly all offenders include minimum and maximum terms, ordinarily set by the sentencing court within a range of discretion provided by statute. The final determination of precisely how much time an offender must serve is made by the parole authority. The parole agency must weigh several complex factors in making its decision, not all of which are necessarily complementary. In the first instance, parole has the practical effect of balancing differences in sentencing policies and practices between judges and courts in a system that is as wide and diverse as the Federal criminal justice system. In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offense which will satisfy the legitimate needs of society to hold the offender accountable for his own acts.

The parole authority must also have in mind some reasonable system for judging the probability that an offender will refrain from future criminal acts. The use of guidelines and the narrowing of geographical areas of consideration will sharpen this process and improve the likelihood of good decisions.

The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well as the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen. Once sentence has been imposed, parole is the agency responsible for keeping in prison those who because of the need for accountability to society or for the protection of society must be retained in prison. Of equal importance, however, parole provides a means of releasing those inmates who are ready to be responsible citizens, and whose continued incarceration, in terms of the needs of law enforcement, represents a misapplication of tax dollars.

These purposes which parole serves may at times conflict and at the very least are complicated in their administration by the lack of tools to accurately predict human behavior and judge human motivation.

Because these decisions are so difficult from both the standpoint of the inmate denied parole, as well as the concerns of a larger public about the impact of a rising crime rate, there was almost universal dissatisfaction with the parole process at the beginning of this decade. As a result, both the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee, and the Subcommittee on National Penitentiaries of the Senate Judiciary Committee began seeking legislative answers to the problems raised. In the case of both Subcommittees a major effort was mounted to make parole a workable process.

Following the appointment of Maurice H. Sigler as Chairman of the U.S. Board of Parole in 1972, a working relationship developed between the Board and the two Subcommittees. As a result of this relationship, and with the support of the two Subcommittee chairmen, the Parole Board began reorganization in 1973 along the lines of the legislation presented here.

The organization of parole decision-making along regional lines, the use of hearing examiners to prepare recommendations for action. and, most importantly, the promulgation of guidelines to make parole less disparate and more understandable has met with such success that this legislation incorporates the system into the statute, removes doubt as to the legality of changes implemented by administrative reorganization, and makes the improvements permanent.

It is not the purpose of this legislation to either encourage or discourage the parole of any prisoner or group of prisoners. Rather, the purpose is to assure the newly-constituted Parole Commission the tools required for the burgeoning caseload of required decisions and to assure the public and imprisoned inmates that parole decisions are openly reached by a fair and reasonable process after due consideration has been given the salient information.

To achieve this, the legislation provides for creation of regions, assigning a commissioner to each region. and delegation of broad decisionmaking authority to each regional commissioner and to a national appellate panel. The bill also makes the Parole Commission, the agency succeeding the Parole Board, independent of the Department of Justice for decision-making purposes.

In the area of parole decision-making, the legislation establishes clear standards as to the process and the safeguards incorporated into it to insure fair consideration of all relevant material, including that offered by the prisoner. The legislation provides a new statement of criteria for parole determinations, which are within the discretion of the agency, but reaffirms existing caselaw as to judicial review of individual case decisions.

The legislation also reaffirms caselaw insuring a full panoply of due process to the individual threatened with return to prison for violation of technical conditions of his parole supervision, and provides that the time served by the individual without violation of conditions be credited toward service of sentence. It goes beyond present law in insuring appointment of counsel to indigents threatened with reimprisonment.

# APPENDIX C

The regulations of the Parole Commission (28 C.F.R. part 2, as amended) are reproduced on the following pages. This is a reprint of a compilation produced by the Commission for its use.

Sec.



AUTHORITY: 28 C.F.R. Chapter 1, Part 0, Subpart I, and 18 U.S.C. 3655, 4164, 4201-4218, 4254-5, and 5005-5041.

Sec. 2.1 DEFINITIONS

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two other National Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board. The Vice Chairman of the Commission shall be the presiding officer of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be the presiding officer of the National Commissioners.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a pre-release record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part 0, Subpart V of Title 28 of the Code of Federal Regulations.

Sec. 2.2 ELIGIBILITY FOR PAROLE: ADULT SENTENCES

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(a), [or pursuant to former 18 U.S.C. 4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(1) [or pursuant to former 18 U.S.C. 4208(a)(1)] may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (b)(2) [or pursuant to former 18 U.S.C. 4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission, except that a Federal prisoner sentenced prior to May 14, 1976, to a maximum term or terms of at least six months but not more than one year is eligible for parole consideration after service of one-third of such term or terms.

Sec. 2.3 SAME; NARCOTIC ADDICT REHABILITATION ACT.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for "study" prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required unless the revocation of parole was based on drug-related violations. (18 U.S.C. 4254).

Sec. 2.4 SAME; YOUTH OFFENDERS AND JUVENILE DELINQUENTS.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission. (18 U.S.C. 5017(a) and 5041).

Sec. 2.5 SENTENCE AGGREGATION.

When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 U.S.C. §§4161 and 4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

Sec. 2.6 WITHHELD AND FORFEITED GOOD TIME.

While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, Sec. 4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

Sec. 2.7 COMMITTED FINES.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under the institutional regulations, his ability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding $20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section, nevertheless if the chief executive officer of the institution or U.S. Magistrate shall find that retention of all such assets is reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the chief executive officer of the institution or U.S. Magistrate shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account of his fine of that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

Sec. 2.8 MENTAL COMPETENCY PROCEEDINGS.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by a hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Federal Prison System facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

Sec. 2.9 STUDY PRIOR TO SENTENCING.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the United States Federal Prison System.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report its findings to the court (18 U.S.C. 5010(e)).

Sec. 2.10 DATE SERVICE OF SENTENCE COMMENCES.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: Provided, however, that any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on bail pending appeal; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of subsection (b) of this section.

Sec. 2.11 APPLICATION FOR PAROLE; NOTICE OF HEARING.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to Sec. 2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 45 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who fails to submit either an application for parole or a waiver form shall be referred to the Commission's representatives by the chief executive officer of the institution. The prisoner shall then receive an explanation of his right to apply for parole at a later date.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Federal Prison System for completion by the prisoner.

(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to Sec. 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by Sec. 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

Sec. 2.12 INITIAL HEARINGS: SETTING PRESUMPTIVE RELEASE DATES.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted at least 30 days prior to the completion of such minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within ten years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a ten year reconsideration hearing pursuant to Sec. 2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of Sections 2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. Sec. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to Section 2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by Sec. 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

Sec. 2.13 INITIAL HEARING; PROCEDURE.

(a) An initial hearing shall be conducted by a panel of two hearing examiners. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in Sec. 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and of the reasons therefor. Written notice of the official decision, or the decision to refer under Section 2.17 or Section 2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter) the prisoner shall also receive in writing the reasons therefor.

(d) In accordance with 18 U.S.C. 4206, reasons for parole denial may include the following, with further specification as appropriate:

(1) The prisoner has not substantially observed the rules of the institution or institutions in which confined;

(2) Release, in the opinion of the Commission, would depreciate the seriousness of the offense or promote disrespect for the law; or

(3) Release, in the opinion of the Commission, would jeopardize the public welfare.

In lieu of, or in combination with, the above reasons the prisoner shall be furnished with a guidelines evaluation statement containing his offense severity rating and salient factor score (including the points credited on each item of such score) as described in Sec. 2.20, as well as the specific factors and information relied upon for any decision to continue such prisoner for a period outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to Sec. 2.55, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

2.14 SUBSEQUENT PROCEEDINGS.

(a) Interim proceedings. The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or ten-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of Sec. 2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released). However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a ten-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a ten-year reconsideration hearing shall be advanced only (1) for superior program achievement under the provisions of Sec. 2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of Section 2.34(c-g). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this subsection);

(iv) If a presumptive date falls within six months after the date of an interim hearing, the Commission may treat the interim hearing as a prerelease review in lieu of the record review required by paragraph (b) of this section.

(b) Pre-Release reviews. The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by Sec. 2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by Sec. 2.34;

(iv) Advance the parole date for superior program achievement under the provisions of Sec. 2.60.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(c) Ten-year reconsideration hearings. A ten-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at Sec. 2.13.

(1) A ten-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a ten-year reconsideration hearing, the Commission may take any one of the actions authorized by Sec. 2.12(b).

Sec. 2.15 PETITION FOR CONSIDERATION OF PAROLE PRIOR TO DATE SET AT HEARING.

When a prisoner has served the minimum term of imprisonment required by law, the Federal Prison System may petition the responsible Regional Commissioner for reopening the case under Sec. 2.28(a) and consideration of parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

Sec. 2.16 PAROLE OF PRISONER IN STATE, LOCAL, OR TERRITORIAL INSTITUTION.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommittal for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Federal Prison System to Federal Institutions for hearings by examiner panels of the Commission.

(d) Federal Youth Corrections Act offenders who are committed under 18 U.S.C. §3401 and who are given commitments of six months or less, shall be given parole consideration on the record only.

Sec. 2.17 ORIGINAL JURISDICTION CASES.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a quorum of Commissioners as described below, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of three votes with the appropriate Regional Commissioner and each National Commissioner having one vote. Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (i) involved an unusual degree of sophistication or planning or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) Long-term sentences. Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c) (1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to Sec. 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to Sec. 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

Sec. 2.18 GRANTING OF PAROLE.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

Sec. 2.19 INFORMATION CONSIDERED.

(a) In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) presentence investigation reports;

(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney; and

(5) reports of physical, mental, or psychiatric examination of the offender.

(b) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt).

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

Sec. 2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at Sec. 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h)(1) The Adult Guidelines shall apply to all offenders except as specified in paragraph (2).

(2) The Youth/NARA Guidelines will apply to any offender sentenced under the Youth Corrections Act, the Narcotic Rehabilitation Act, or the Juvenile Justice Act, and to any other offender who was less than 22 years of age at the time the current offense was committed, regardless of sentence type. If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

| OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples) | OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score) | | | |
|---|---|---|---|---|
| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
| LOW | | | | |
| Alcohol or Cigarette law violations, including tax evasion (amount of tax evaded less than $2,000)[1] | | ADULT RANGE | | |
| Gambling law violations (no managerial or proprietary interest) | <=6 months | 6-9 months | 9-12 months | 12-16 months |
| Illicit drugs, simple possession | | | | |
| Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)] | | (YOUTH RANGE) | | |
| | ( <=6) months | (6-9 ) months | (9-12) months | (12-16) months |
| Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000 | | | | |
| LOW MODERATE | | | | |
| Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000] | | | | |
| Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)] | | ADULT RANGE | | |
| | <=8 months | 8-12 months | 12-16 months | 16-22 months |
| Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana / 1-4.9 lbs. of hashish / .01-.04 liters of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)] | | | | |
| Gambling law violations - managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)] | | (YOUTH RANGE) | | |
| | ( <=8) months | (8-12) months | (12-16) months | (16-20) months |
| Immigration law violations | | | | |
| Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000 | | | | |
| MODERATE | | | | |
| Automobile theft (3 cars or less involved and total value does not exceed $19,999)[2] | | ADULT RANGE | | |
| Counterfeit currency or other medium of exchange [(passing/possession) $2,000 - $19,999] | 10-14 months | 14-18 months | 18-24 months | 24-32 months |
| Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)] | | (YOUTH RANGE) | | |
| Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana / 5-19.9 lbs. of hashish / .05-.19 liters of hash oil)] | (8-12) months | (12-16) months | (16-20) months | (20-26) months |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| MODERATE (continued) | | | | |
| Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)] | | | | |
| Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)] | ADULT RANGE | | | |
| | 10-14 months | 14-18 months | 18-24 months | 24-32 months |
| Firearms Act, possession/purchase/ sale (single weapon: not sawed-off shotgun or machine gun) | | | | |
| Gambling law violations - managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000-$15,000); Horse books (estimated daily gross $1,500-$4,000); Numbers bankers (estimated daily gross $750-$2,000)] | (YOUTH RANGE) | | | |
| | (8-12) months | (12-16) months | (16-20) months | (20-26) months |
| Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000-$19,999 | | | | |
| Smuggling/transporting of alien(s) | | | | |
| HIGH | | | | |
| Carnal Knowledge[3/] | | | | |
| Counterfeit currency or other medium of exchange [(passing/ possession) $20,000 - $100,000] | | | | |
| Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)] | ADULT RANGE | | | |
| | 14-20 months | 20-26 months | 26-34 months | 34-44 months |
| Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)] | | | | |
| Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana / 20-199 lbs. of hashish / .20-1.99 liters of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)] | | | | |
| Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate] | (YOUTH RANGE) | | | |
| Firearms Act, possession/purchase/ sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) | (12-16) months | (16-20) months | (20-26) months | (26-32) months |
| Gambling law violations - managerial or proprietary interest in large scale operation (e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000)] | | | | |
| Involuntary manslaughter (e.g., negligent homicide) | | | | |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| HIGH (continued) | | | | |
| Mann Act (no force - commercial purposes) | | ADULT RANGE | | |
| Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000 - $100,000 | 14-20 months | 20-26 months | 26-34 months | 34-44 months |
| | | (YOUTH RANGE) | | |
| Threatening communications (e.g., mail/phone) - not for purposes of extortion and no other overt act | (12-16) months | (16-20) months | (20-26) months | (26-32) months |
| VERY HIGH | | | | |
| Robbery (1 or 2 instances) | | | | |
| Breaking and entering - armory with intent to steal weapons | | | | |
| Breaking and entering/burglary - residence; or breaking and entering of other premises with hostile confrontation with victim | | | | |
| Counterfeit currency or other medium of exchange [(passing/possession/ manufacturing) - amount more than $100,000 but not exceeding $500,000] | | ADULT RANGE | | |
| Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I] | 24-36 months | 36-48 months | 48-60 months | 60-72 months |
| Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana / 200 lbs. or more of hashish / 2 liters or more of hash oil)] | | | | |
| Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I] | | | | |
| Opiates, possession with intent to distribute/sale [medium scale or more (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) except as described in Greatest I] | | (YOUTH RANGE) | | |
| Extortion [threat of physical harm (to person or property)] | (20-26) months | (26-32) months | (32-40) months | (40-48) months |
| Explosives, possession/transportation | | | | |
| Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000 | | | | |
| GREATEST I | | | | |
| Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention) | | ADULT RANGE | | |
| | 40-52 months | 52-64 months | 64-78 months | 78-100 months |
| Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied) - no serious injury occurred] | | (YOUTH RANGE) | | |
| | (30-40) months | (40-50) months | (50-60) months | (60-76) months |

| | Very Good (11 to 9) | Good (8 to 6) | Fair (5 to 4) | Poor (3 to 0) |
|---|---|---|---|---|
| GREATEST I (continued) | | | | |
| Drugs (other than specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)] | ADULT RANGE | | | |
| Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)] | 40-52 months | 52-64 months | 64-78 months | 78-100 months |
| Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)] | | | | |
| Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving to a secluded location, and releasing victim unharmed)] | (YOUTH RANGE) | | | |
| | (30-40) months | (40-50) months | (50-60) months | (60-76) months |
| Robbery (3 or 4 instances) | | | | |
| Sex act- force (e.g., forcible rape or Mann Act (force)] | | | | |
| Voluntary manslaughter (unlawful killing of a human being without malice; sudden quarrel or heat of passion) | | | | |
| GREATEST II | | | | |
| Murder | ADULT RANGE | | | |
| Aggravated felony - serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim | 52+ months | 64+ months | 78+ months | 100+ months |
| Aircraft hijacking | (YOUTH RANGE) | | | |
| Espionage | (40+ ) months | (50+ ) months | (60+ ) months | (76+ ) months |
| Kidnapping (for ransom or terrorism; as hostage; or harm to victim) | Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category. | | | |
| Treason | | | | |

## GENERAL NOTES

A. These guidelines are predicated upon good institutional conduct and program performance.

B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

D. If an offense behavior involved multiple separate offenses, the severity level may be increased.

E. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

## OTHER OFFENSES

(1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.

(2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to $2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.

(3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.

(4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than $20,000 in value); and shall be rated as no less than high severity in any other case. In the case of a bribe/demand with a value in excess of $100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

(5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.

(6) Misprision of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

(7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

## REFERENCED NOTES

1. Alcohol or cigarette tax law violations involving $2,000 or more of evaded tax shall be treated as a property offense (tax evasion).

2. Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than $19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity.

3. Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

## DEFINITIONS

a. 'Other media of exchange' include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.

b. 'Drugs, other than specifically categorized' include, but are not limited to, the following, listed in ascending order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phencyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated towards the bottom of the guideline range and PCP will normally be rated towards the top).

c. 'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.

d. The 'opiate' category includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

e. Managerial/Proprietary Interest (Large Scale Drug Offenses):

Managerial/proprietary interest in large scale drug cases is defined to include offenders who sell or negotiate to sell such drugs; or who have decision-making authority concerning the distribution/sale, importation, cutting, or manufacture of such drugs; or who finance such operations. Cases to be excluded are peripherally involved offenders without any decision-making authority (e.g., a person hired merely as a courier).

SALIENT FACTOR SCORE

Register Number_____ Name_____

Item A----------
No prior convictions (adult or juvenile) = 3
One prior conviction = 2
Two or three prior convictions = 1
Four or more prior convictions = 0

Item B----------
No prior commitments (adult or juvenile) = 2
One or two prior commitments = 1
Three or more prior commitments = 0

Item C----------
Age at behavior leading to first commitment (adult or juvenile):
26 or older = 2
18-25 = 1
17 or younger = 0

*Item D----------
Commitment offense did not involve auto theft or check(s) (forgery/larceny) = 1
Commitment offense involved auto theft [X], or check(s) [Y], or both [Z] = 0

*Item E----------
Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1
Has had parole revoked or been committed for a new offense while on parole [X], or is a probation violator this time [Y], or both [Z] = 0

Item F----------
No history of heroin or opiate dependence = 1
Otherwise = 0

Item G----------
Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community = 1
Otherwise = 0

TOTAL SCORE----------

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as if a conviction, even if a conviction is not formally entered.

*NOTE TO EXAMINERS:
If Item D and/or E is scored 0, place the appropriate letter (X, Y or Z) on the line to the right of the box.

Sec. 2.21 REPAROLE CONSIDERATION GUIDELINES.

(a) If revocation is based upon administrative violation(s) only [i.e., violations other than new criminal conduct] the following guidelines shall apply.

| | Customary Time to be Served Before Rerelease |
|---|---|
| Positive Supervision History: (Examples) | |
| a. No serious alcohol/drug abuse and no possession of weapon(s) [and]<br>b. At least 8 months from date of release to date of violation behavior [and]<br>c. Present violation represents first instance of failure to comply with parole regulations of this term. | < 6 Months |
| Negative Supervision History: (Examples) | |
| a. Serious alcohol/drug abuse (e.g., readdiction to opiates) or possession of weapon(s) [or]<br>b. Less than 8 months from date of release to date of violation behavior [or]<br>c. Repetitious or persistent violations. | 6 - 9 Months |

(b)(1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 C.F.R. Sec. 2.20 shall then be applied. The original guideline type (e.g., adult, youth) shall determine the applicable guidelines for the parole violator term, except that a violator committed with a new federal sentence of more than one year shall be treated under the guideline type applicable to the new sentence.

(3) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by Sections 2.47(b) and 2.52(c) and (d).

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Minor offense(s) (e.g., minor traffic offenses, vagrancy, public intoxication) shall normally be treated under administrative violations.

Sec. 2.22 COMMUNICATION WITH THE COMMISSION.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate office setting forth the nature of the information to be discussed.

Such interview may be conducted by a Commissioner or assigned staff, and a written summary of each such interview shall be prepared and placed in the prisoner's file.

Sec. 2.23 DELEGATION TO HEARING EXAMINERS.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Hearings shall be conducted by a panel of two hearing examiners, except where specifically provided that a hearing may be conducted by a single hearing examiner or other official designated by the Regional Commissioner.

(b) The concurrence of two examiners shall be required for a panel recommendation. If a hearing is conducted by a single examiner (or other official), the case shall be reviewed on the record by an additional examiner or examiners for the required vote or votes.

(c) In the event of a divided recommendation by a panel, the regional Administrative Hearing Examiner shall vote. If the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under this paragraph will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision upon review and docketing at the Regional Office, unless action is initiated by the Regional Commissioner pursuant to §2.17 or §2.24.

Sec. 2.24 REVIEW OF PANEL RECOMMENDATION BY THE REGIONAL COMMISSIONER.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On the motion of the Administrative Hearing Examiner, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel.

Sec. 2.25 REGIONAL APPEAL.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of a decision to grant, rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to Sec. 2.17 shall be pursuant to Sec. 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The Regional Commissioner may affirm the decision, order a new institutional hearing on the next docket, order a regional appellate hearing, or reverse or modify the decision. Reversal of a decision, or the modification of a decision by more than one hundred eighty days, or a modification resulting in a decision below the guidelines, whether based upon the record or following a regional appellate hearing, shall require the concurrence of two out of three Regional Commissioners. Decisions requiring a second or additional vote shall be referred to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) Regional appellate hearings may be held at the regional office before the Regional Commissioner. If a regional appellate hearing is ordered, attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Commissioner stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Commissioner shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(d) Within 30 days of receipt of the appeal, except in emergencies, the Regional Commissioner shall inform the applicant in writing of the decision and the reasons therefor.

(e) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(f) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

(i) Severity rating;
(ii) Salient factor score;
(iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

Sec. 2.26 APPEAL TO NATIONAL APPEALS BOARD.

(a) Within 30 days of entry of a Regional Commissioner's decision under Section 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of

two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman; and, if necessary, to other Regional Commissioners on a rotating basis as established by the Chairman.

(b) The National Appeals Board shall act within 60 days of receipt of the appellant's papers, to affirm, modify, or reverse the decision.

(c) Decisions of the National Appeals Board shall be final.

Sec. 2.27 APPEAL OF ORIGINAL JURISDICTION CASES.

(a) Cases decided under the procedure specified in Sec. 2.17 may be appealed within thirty days of the date of the decision on a form provided for this purpose. Appeals will be reviewed at the next regularly scheduled meeting of the Commission provided they are received thirty days in advance of such meeting. Appeals received in the office of the Commission's National Appeals Board in Washington, D.C., less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting thereafter. A quorum of five Commissioners shall be required and decisions shall be by majority vote. In the case of a tie vote, the previous decision shall stand. This appellate decision shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information in support of a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 320 First Street, N.W., Washington, D.C. 20537. Supporting material should be submitted at least two weeks in advance of the meeting at which the appeal will be heard, in order to permit consideration thereof by the Commission.

(c) Attorneys, relatives, or other interested parties who wish to speak for or against parole at such consideration must submit a written request to the Chairman of the Commission stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(d) If no appeal is filed within thirty days of the entry of the decision under Sec. 2.17 that decision shall stand as the final decision of the Commission.

Sec. 2.28 REOPENING OF CASES.

(a) Favorable information. Notwithstanding the appeal procedures of Sec. 2.25 and Sec. 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner and may then take any action authorized under the provisions and procedures of Sec. 2.25. Original Jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of Sec. 2.17.

(b) Institutional misconduct. Consideration of disciplinary infractions and allegations of new criminal conduct occurring after the setting of a parole date are subject to the provisions of Sec. 2.14 (in the case of a prisoner with a presumptive date) and Sec. 2.34 (in the case of a prisoner with an effective date of parole).

(c) Additional sentences. If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to consider the additional sentence and reevaluate the case. Such action shall void any presumptive or effective release date previously established.

(d) Conviction after revocation. Upon receipt of information subsequent to the revocation hearing that a prisoner whose parole has been revoked has sustained a new conviction for conduct while on parole, the Regional Commissioner may reopen the case pursuant to Sec. 2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider forfeiture of time spent on parole and such further action as may be appropriate. The entry of a new order shall void any presumptive or effective release date previously established.

(e) Release planning. When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may on his own motion reconsider any case prior to release and may reopen and advance or retard an effective parole date for purposes of release planning. Retardation without a hearing may not exceed 120 days.

(f) New adverse information. Upon receipt of new information adverse to a prisoner that is not covered by paragraphs (a-e) of this section, the Regional Commissioner may refer the case to the National Commissioners with his recommendation and vote to retard parole and schedule the case for a special reconsideration hearing. The decision to reopen the case shall be based on the concurrence of three out of five votes, and the hearing shall be conducted in accordance with the procedures set out in Sections 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

Sec. 2.29 RELEASE ON PAROLE.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

Sec. 2.30 FALSE OR WITHHELD INFORMATION.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Commission. If evidence comes to the attention of the Commission that a prisoner wilfully concealed or misrepresented information deemed significant, the Regional Commissioner may reopen the case pursuant to Sec. 2.28(f) for a hearing to determine whether such parole should be voided. Such action may be taken whether or not the prisoner has actually been released on parole. If such prisoner has been released on parole, the Commission or a member thereof may issue a summons or warrant for such prisoner.

Sec. 2.31 PAROLE TO DETAINERS; STATEMENT OF POLICY.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in Sec. 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

Sec. 2.32 PAROLE TO LOCAL OR IMMIGRATION DETAINERS.

(a) When a state or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) Parole to the actual physical custody of the detaining authorities only. In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) Parole to the actual physical custody of the detaining authorities or an approved plan. In this event, release is to be effected regardless of whether the detaining officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal Immigration officials, the Commission shall order the following: Parole to the actual physical custody of the immigration authorities or an approved plan. In this event, release is to be effected regardless of whether immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

Sec. 2.33 RELEASE PLANS.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan.

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an advisor who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

Sec. 2.34 RESCISSION OF PAROLE.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by an Institutional Disciplinary Committee or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 60 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a Community Treatment Center or a state or local halfway house.

(b) Upon the ordering of a rescission hearing under this section, the prisoner shall be afforded written notice specifying the information to be considered at the hearing. The notice shall further state that the purpose of the hearing will be to decide whether rescission of the parole date is warranted based on the charges listed on the notice, and shall advise the prisoner of the procedural rights described below.

(c) An Institutional Disciplinary Committee hearing resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

(d) In the case of allegations of new criminal conduct committed prior to delivery of the parole certificate, the Commission may consider documentary evidence and/or written testimony presented by the prisoner, arresting authorities, or other persons.

(e) The prisoner may be represented at a rescission hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement following the discussion of the charges with the prisoner, and to provide such additional information as the examiner panel may require. However, the presiding hearing examiner may limit or exclude any irrelevant or repetitious statement.

(f) The evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner upon request, subject to the exemptions set forth at §2.55. If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

Sec. 2.35 MANDATORY RELEASE IN THE ABSENCE OF PAROLE.

(a) A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

(b) A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

Sec. 2.36 RESCISSION GUIDELINES.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) ADMINISTRATIVE RULE INFRACTION(S) (including drug/alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) ESCAPE/NEW CRIMINAL BEHAVIOR IN A PRISON FACILITY (including a Community Treatment Center). The time required pursuant to the guidelines set forth in (i) and (ii) below shall be added to the time required by the original presumptive or effective date.

(i) Escape or Attempted Escape Without Force or Threat

| | |
|---|---|
| (A) Non-Secure Facility or Program (absent less than 7 days) | 3-6 months |
| (B) Secure Facility (no force or threat used); or Non-Secure Facility or Program (absent 7 days or more) | 6-12 months |

Notes: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(ii) Other New Criminal Behavior in a Prison Facility

| Severity Rating of the New Criminal Behavior (from §2.20) | Adult Cases | Youth/NARA Cases |
|---|---|---|
| Low | <=6 months | <=6 months |
| Low Moderate | <=8 months | <=8 months |
| Moderate | 10-14 months | 8-12 months |
| High | 14-20 months | 12-16 months |
| Very High | 24-36 months | 20-26 months |
| Greatest I | 40-52 months | 30-40 months |
| Greatest II | 52 + months | 40 + months |

(3) NEW CRIMINAL BEHAVIOR IN THE COMMUNITY (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to re-parole violators under §2.21 shall be applied, using the new offense severity (from §2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

Sec. 2.37 DISCLOSURE OF INFORMATION CONCERNING PAROLEES; STATEMENT OF POLICY.

(a) Information concerning a parolee under the Commission's supervision may be disclosed to a person or persons who may be exposed to harm through contact with that particular parolee if such disclosure is deemed by a Commissioner to be reasonably necessary to give notice that such danger exists.

(b) Names of parolees under supervision will not be furnished to a police department of a community, except as required by law, or authorized by the United States Parole Commission. All such notifications are to be regarded as confidential.

Sec. 2.38 COMMUNITY SUPERVISION BY UNITED STATES PROBATION OFFICERS.

(a) Pursuant to sections 3655 and 4203(b)(4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to persons released by parole or as if on parole (mandatory release) under the Commission's jurisdiction.

(b) A parolee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

Sec. 2.39 JURISDICTION OF THE COMMISSION.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by Section 2.35, Section 2.43, or Section 2.52.

(b) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(c) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

(d) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

Sec. 2.40 CONDITIONS OF RELEASE.

(a) The conditions of release are printed on the release certificate and are binding regardless of whether the parolee signs the certificate. The following conditions are deemed necessary to provide adequate supervision and to protect the public welfare:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole advisor, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole advisor or his probation officer or his office, he shall communicate with the United States Parole Commission, Washington, D. C. 20537.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer at other times as the probation officer directs.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or his office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not have firearms (or other dangerous weapons) in his possession without the written permission of his probation officer, following prior approval of the United States Parole Commission. NOTE: Such permission may not be considered in cases in which the parolee is prohibited from such possession by any federal, state, or local law.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the U. S. Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of Section 4251(a), or a drug dependent person within the meaning of Section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by Section 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(f) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (e) of this section.

(g) A parolee may appeal an order to impose or modify parole conditions under the procedures of Section 2.25 and Section 2.26 as applicable not later than thirty days after the effective date of such conditions.

Sec. 2.41 TRAVEL APPROVAL.

(a) The probation officer may approve travel outside the district without approval of the Regional Commissioner in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Commissioner is required for other travel, including travel to or from the contiguous forty-eight states, employment more than fifty miles outside the district, and vacations exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel. In cases falling under the criteria of Section 2.17, the concurrence of two out of three members shall be required to grant such permission.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

Sec. 2.42 PROBATION OFFICER'S REPORTS TO COMMISSION.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee after the completion of 12 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

Sec. 2.43 EARLY TERMINATION.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence. A committed youth offender may be granted an early termination of jurisdiction (unconditional discharge) after one year of continuous supervision on parole.

(2) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer's report.

(3) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner.

(4) If supervision is not terminated under paragraph (a)(3) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to termination of supervision not less frequently than biennially.

(5) In calculating the five-year period referred to in paragraph (a)(3) of this section, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(6) When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) The Regional Commissioner in the region of supervision may release a parolee from supervision pursuant to this section if warranted by the circumstances of the case and reports of the supervising probation officer; except that, in the case of a parolee previously considered pursuant to Section 2.17, the decision to grant termination of supervision must also be pursuant to the provisions of Section 2.17.

(c)(1) In determining whether or not to grant early termination from supervision under paragraph (a)(2) of this section, the Commission shall presume that termination is warranted when:

(A) a parolee with a salient factor score of 9-11 has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and

(B) a parolee with a salient factor score of 8 or less has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

(2) a parolee with a salient factor score of 9-11 will be continued on supervision for two years unless case-specific factors show that continued supervision would be counter-productive. A parolee with a salient factor of 8 or less may be granted termination earlier than three years if case-specific factors warrant the conclusion that such parolee is presently as good a risk as a parolee with a score of 9-11.

(3) A parolee may be continued on supervision past the indicated termination point if case-specific factors justify a conclusion that maintaining continued parole supervision is needed to protect the public welfare.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until the disposition of such charge(s) is known.

(5) An indication of new criminal behavior shall include a new arrest, if there appears to be substantial evidence of guilt (even if such arrest does not result in conviction or parole revocation).

(d) A parolee may appeal an adverse decision under paragraphs (a)(3) or (4) of this section pursuant to Sections 2.25, 2.26 or Section 2.27 as applicable.

Sec. 2.44 SUMMONS TO APPEAR OR WARRANT FOR RETAKING OF PAROLEE.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. Section 4164, such summons or warrant may be issued only within the maximum term or terms, less one-hundred eighty days. A summons or warrant shall be considered issued when signed and placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section suspends the running of a sentence until such time as the parolee may be retaken into custody and a final determination of the charges may be made by the Commission.

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

Sec. 2.45 SAME; YOUTH OFFENDERS.

(a) In addition to the issuance of a summons or warrant pursuant to Section 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

Sec. 2.46 EXECUTION OF WARRANT AND SERVICE OF SUMMONS.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered, shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

Sec. 2.47 WARRANT PLACED AS A DETAINER AND DISPOSITIONAL REVIEW.

(a) When a parolee is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer.

(1) If such prisoner is serving a new sentence in a federal institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable.

(2) If the prisoner is serving a new sentence in a state or local institution, the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of §2.48(b) to assist him in completing this written application. Following a dispositional review, the Regional Commissioner may:

(i) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and order that a revocation hearing be scheduled upon return to a federal institution or upon completion of eighteen months in confinement on the new term, whichever comes first.

(ii) Withdraw the warrant, thus (1) ordering reinstatement of the parolee to supervision upon release from confinement or (2) closing the case if the expiration date has passed.

(b) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in §2.52.

(c)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at §§2.20 and 2.21.

(2) However, it shall be the general policy of the Commission that the revoked parolee's original sentence (which, due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or upon completion of 18 months of the new sentence, whichever comes first. Exceptions to the policy set forth in this subparagraph may, for specific reasons be taken by the Commission under the procedures of §2.24(a). This subsection does not apply to cases originally sentenced under the YCA or NARA statutes, since the running of these sentences is not interrupted by a new conviction.

(d) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in §2.48(b).

Sec. 2.48 REVOCATION, PRELIMINARY INTERVIEW.

(a) Interviewing Officer: A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) Notice and Opportunity to Postpone Interview: At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by Sec. 2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. Sec. 3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to Sec. 2.49(a) a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) Review of the Charges: At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to Sec. 2.50(e).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) Release notwithstanding probable cause: If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) continuation of revocation proceedings is not warranted despite the violations found; or

(2) incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) Conviction as probable cause: Conviction of a Federal, State, or Local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) Local revocation hearing: A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

Sec. 2.49 PLACE OF REVOCATION HEARING.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits any violation of the conditions of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under Sec. 2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under Sec. 2.44 shall remain on supervision pending the decision of the Commission.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

Sec. 2.50 REVOCATION HEARING PROCEDURE.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

(f) A revocation decision may be appealed under the provisions of §2.25 and §2.26, or §2.27 as applicable.

Sec. 2.51 ISSUANCE OF A SUBPOENA FOR THE APPEARANCE OF WITNESSES OR PRODUCTION OF DOCUMENTS.

(a) (1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the Regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the Regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the Regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the Regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

Sec. 2.52 REVOCATION DECISIONS.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand (ii) Modification of the parolee's conditions of release (iii) Referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) If the parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by a term of imprisonment, forfeiture of the time from the date of such release to the date of execution of the warrant shall be ordered and such time shall not be credited to service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d) (1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in Sec. 2.10(b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

Sec. 2.53 MANDATORY PAROLE.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addict Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010(c) of the Youth Corrections Act) serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve until the expiration of his sentence less good time.

(b) When feasible, at least sixty days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to Sec. 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is five years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoner.

Sec. 2.54 REVIEWS PURSUANT TO 18 U.S.C. 4215(c).

The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institution or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

Sec. 2.55 DISCLOSURE OF FILE PRIOR TO PAROLE HEARINGS: PREHEARING REVIEW.

(a) Procedure.

(1) At least 60 days prior to a scheduled hearing pursuant to §§2.12 or 2.14, each prisoner shall be furnished a notice of his right to request disclosure of the reports and other documents that may be relied upon by the Commission in making its determination.

(2) Upon request by the prisoner, reivew of disclosable documents in the institution file will be permitted by the Federal Prison System, pursuant to its regulations, within fifteen days of the request. Such review may be requested prior to the hearing, or at any other time thereafter.

(3) The prisoner shall be permitted to obtain, prior to a hearing, copies of any disclosable documents within the scope of this section that may have been retained in the Commission's regional office file, provided that the regional office receives such request at least thirty days in advance of such hearing to allow for processing.

(b) Scope of disclosure. The scope of disclosure under this section shall be limited to the following reports and other documents which the Commission utilizes in making its parole determinations:

(1) At initial hearings and reconsideration hearings, official reports and other documents conveying relevant information concerning the prisoner's offense behavior, prior record, history and characteristics, institutional performance, and parole release plan.

(2) At interim review hearings pursuant to §2.14 of these rules, official reports and other documents informing the Commission of factors which have changed, or which may have changed, since the date of the last hearing.

(c) Exemptions to disclosure. A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise to any person. (18 U.S.C. 4208(c)).

(d) Summarization of material withheld.

(1) If any document, or portion thereof, is deemed by the originating agency to fall within an exemption to disclosure, and non-disclosure appears warranted, such agency shall identify the material to be withheld and the basis for withholding under paragraph (b) of this section, and shall furnish for disclosure to the prisoner a summary conveying the general nature of the assertion(s) contained in the document withheld, with as much specificity as circumstances will permit. However, such summary should not be so specific that the protected items of information would be subject to identification.

(2) All official reports bearing upon the parole determination should be sent to the institution in which the prisoner is confined. Preparation for disclosure (including any necessary summarizing) must be completed prior to the submission of the report.

(3) Documents which have not been cleared for disclosure or summarized may not be considered by the Commission in its determination, without a signed waiver of disclosure from the prisoner.

(e) Waivers of disclosure. If any document relevant to the parole determination has not been disclosed to the prisoner within the time limits specified in this rule, the prisoner shall be offered the opportunity to waive prehearing disclosure of such document without prejudice to the prisoner's right to review the document (or a summary thereof) at any time thereafter. If the prisoner chooses not to sign a waiver, the examiner panel shall continue the hearing to the end of the docket, or to the next docket, in order to permit adequate disclosure. A continuance for the purpose of permitting disclosure may not be extended beyond the next hearing docket.

(f) Late-received documents. In the event an official report or other document is received following the parole hearing but during the pendency of the parole determination proceeding, and such document contains new and significant adverse information, the prisoner shall be placed on the next docket for a re-hearing and the document shall be promptly forwarded for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of such hearing and of his right to request disclosure of the document pursuant to the provisions of this section. If such document is determined not to contain new and significant information, it shall not be considered in the parole determination.

(g) Reopened cases. Whenever a case is reopened for a new hearing under §2.28 or related sections, the relevant supporting document(s) shall be sent to the institution wherein the prisoner is confined and the prisoner shall be informed of his right to request disclosure of such documents.

Sec. 2.56 DISCLOSURE OF PAROLE COMMISSION REGIONAL OFFICE FILE (PRIVACY ACT DISCLOSURE).

(a) Procedure. Copies of disclosable documents pertaining to a prisoner or parolee which are contained in the Regional Office files of the Commission may be obtained at any time by that prisoner or parolee upon written request pursuant to the Privacy Act of 1974. Such requests shall be answered within forty business days of its receipt, absent an emergency. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned.

(b) Scope of disclosure. Disclosure under the Privacy Act of 1974 shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission shall be referred to the appropriate agency for a response pursuant to its regulations, unless such document has previously been prepared for disclosure pursuant to §2.55 or is fully disclosable on its face. Any request for copies of court documents (incuding the presentence investigation report) must be directed to the appropriate court.

(c) Exemptions to disclosure. A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

(d) Specification of documents withheld. Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Office of Privacy and Information Appeals (Associate Attorney General).

(e) Hearing record. Upon request by the prisoner or parolee concerned, the Commission shall promptly make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) Costs. In any case in which reproduction costs exceed three dollars (e.g., reproduction of over thirty pages or of one cassette and twenty-four pages), prisoners will be notified that they will be required to reimburse the United States for such reproduction costs. The Regional Commissioner may waive such reimbursement upon a showing of the prisoner's inability to pay. The Regional Commissioner may require payment in advance of making a disclosure in circumstances where deemed necessary.

(g) Cross References. The Commission's authority to promulgate rules governing disclosure pursuant to the Privacy Act of 1974 may be found at 28 C.F.R. 16.85.

Sec. 2.57 SPECIAL PAROLE TERMS.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. Sections 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence; or if the prisoner is released without supervision, commences upon such release.

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Federal Prison System.

(c) Should a parolee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he may be returned as a violator under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a parolee violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in Sec. 2.52, and subject to reparole or mandatory release under the Special Parole Term.

(d) If a prisoner is reparoled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the prisoner is mandatorily released under the revoked "Special Parole Term" a certificate of mandatory release to Special Parole Term will be issued by the Federal Prison System.

(e) If regular parole or mandatory release supervision is terminated under Sec. 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

Sec. 2.58 PRIOR ORDERS.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

Sec. 2.59 ABSENCE OF HEARING EXAMINER.

In the absence of a hearing examiner, a Regional Commissioner may exercise the authority delegated to hearing examiners in Section 2.23.

Sec 2.60 SUPERIOR PROGRAM ACHIEVEMENT.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner's entire term shall be as set forth in the following schedule. It is the intent of the Commission that the maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given [for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)]. Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

(e) Schedule of Permissible Reductions for Superior Program Achievement.

| Total months required by original presumptive date: | Permissible reduction |
|---|---|
| 14 months or less | Not applicable. |
| 15 to 22 months | Up to 1 month. |
| 23 to 30 months | Up to 2 months. |
| 31 to 36 months | Up to 3 months. |
| 37 to 42 months | Up to 4 months. |
| 43 to 48 months | Up to 5 months. |
| 49 to 54 months | Up to 6 months. |
| 55 to 60 months | Up to 7 months. |
| 61 to 66 months | Up to 8 months. |
| 67 to 72 months | Up to 9 months. |
| 73 to 78 months | Up to 10 months. |
| 79 to 84 months | Up to 11 months. |
| 85 to 90 months | Up to 12 months. |
| 91 plus months | Up to 13 months. |

Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.