

(5) The Commission may reopen and modify a determination upon consideration of the factors listed in section 5K1.1 of the sentencing guidelines if the transferee provides substantial assistance to law enforcement authorities, and that assistance was not previously considered by the Commission. The Commission will treat a request from a foreign or a domestic law enforcement authority as the equivalent of a "motion of the government."

(6) The Commission may modify a determination based upon a clerical mistake or other error in accordance with Federal Rules of Criminal Procedure Rule 36.

(7) The Commission may reopen and modify the release date if it determines that a circumstance set forth in 18 U.S.C. 3582(c) is satisfied.

(1) *Supervised release.* (1) If a period of supervised release is imposed, the Commission presumes that the recommended conditions of supervised release in section 5B1.4(a) of the sentencing guidelines, a condition requiring the transferee to report to the probation office within 72 hours of release from the custody of the Bureau of Prisons, a condition that the transferee not commit another Federal, state or local crime, and a condition that the transferee not possess a firearm or other dangerous weapon are reasonably necessary in every case. These conditions, therefore, shall be imposed unless the Commission finds otherwise. The Commission may also impose special conditions of supervised release whenever deemed reasonably necessary in an individual case.

(2) If the transferee is released pursuant to a date established by the Bureau of Prisons under 18 U.S.C. 4105(c)(1), then the period of supervised release commences upon the transferee's release from imprisonment.

[54 FR 27840, June 30, 1989, as amended at 55 FR 39269, Sep. 26, 1990; 58 FR 30705, May 27, 1993; 59 FR 26425, May 20, 1994; 60 FR 18354, Apr. 11, 1995; 61 FR 38570, July 25, 1996; 61 FR 54096, 54097, Oct. 17, 1996; 62 FR 40270, July 28, 1997. Redesignated at 63 FR 39176, July 21, 1998]

## § 2.69 [Reserved]

### Subpart C—District of Columbia Code Prisoners and Parolees

SOURCE: 63 FR 39176, July 21, 1998, unless otherwise noted.

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

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

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

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

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

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

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

#### § 2.71 Application for parole.

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

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to an adult prisoner's date of eligibility for parole, and at least 120 days from the date a youth offender has been admitted to the institution that is responsible for developing his rehabilitative program.

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

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first

day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

[63 FR 39176, July 21, 1998, as amended at 64 FR 5613, Feb. 4, 1999]

#### § 2.72 Hearing procedure.

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

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

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

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

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

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

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement

may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. A victim or representative may also request permission to appear for an office hearing conducted by an examiner (or other staff member) in lieu of appearing at a parole hearing. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for confidentiality by the victim or representative.

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

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

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

**§ 2.73 Parole suitability criteria.**

(a) In accordance with D.C. Code 24-204(a), the Commission shall be authorized to release a prisoner on parole in

its discretion after he or she has served the minimum term of the sentence imposed, if the following criteria are met:

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

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

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

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

**§ 2.74 Decision of the Commission.**

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

(b) Whenever a decision is rendered within the applicable guideline established by these rules, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

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

**§ 2.75 Reconsideration proceedings.**

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall

be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if there be no docket of hearings scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration"). The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing.

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

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

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

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

(f) Upon entering an order revoking parole, the Board of Parole of the District of Columbia may grant an immediate reparole, or order the parole violator to be returned to prison. In the

latter case, the Board will order a reconsideration date pursuant to its regulations. The Commission shall have sole authority to grant or deny reparole to an offender who has been returned to prison upon an order revoking parole.

[63 FR 39176, July 21, 1998, as amended at 64 FR 5613, Feb. 4, 1999]

#### § 2.76 Reduction in minimum sentence.

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

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

(c) Pursuant to DC Code § 24-201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, in the opinion of the Commission, outstanding participation in the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre-and post-incarceration record; and,

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

(d) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney

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objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

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

[63 FR 39176, July 21, 1998, as amended at 64 FR 5613, Feb. 4, 1999]

**§ 2.77 Medical parole.**

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

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

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

(2) The Commission finds that:

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

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

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

(1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continuing his criminal career; and,

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

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

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

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

(g) Notwithstanding any other provision of this section—

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

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

[63 FR 39176, July 21, 1998, as amended at 64 FR 5614, Feb. 4, 1999]

**§ 2.78 Geriatric parole.**

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the Commission shall determine whether or not to release the prisoner on geriatric parole. Release on geriatric parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for geriatric parole shall be in addition to any other parole for which a prisoner may be eligible.

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

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

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

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

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

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

- (1) Age of the prisoner;
- (2) Severity of illness, disease, or infirmities;
- (3) Comprehensive health evaluation;
- (4) Institutional behavior;
- (5) Level of risk for violence;
- (6) Criminal history; and
- (7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(D.C. Code 24-265(c)(1)-(7)).

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

(g) Notwithstanding any other provision of this section—

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

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

[63 FR 39176, July 21, 1998, as amended at 64 FR 5614, Feb. 4, 1999]

#### § 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24-204 permits the Commission to parole only those prisoners who have substantially

observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s) and if the Commission is satisfied that the parole date set has required a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

#### § 2.80 Guidelines for D.C. Code offenders.

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

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

(c) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. The Commission's general policy shall be that a single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at all hearings. A persistent

record of lesser offenses may also be counted as negative institutional behavior, whether at an initial hearing or a rehearing. At initial hearings, an infraction free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

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

added for negative institutional behavior during the same period.

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

(f) *Point assignment table.*

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

POINT ASSIGNMENT TABLE

Category I: Risk of recidivism		(Salient factor score)
10-8 (Very Good Risk) .....		+0
7-6 (Good Risk) .....		+1
5-4 (Fair Risk) .....		+2
3-0 (Poor Risk) .....		+3
Category II: Current or Prior Violence		(Type of Risk)
<b>Note:</b> Use the highest applicable subcategory. If no subcategory is applicable, score = 0.		
A. Violence in current offense, and any felony violence in two or more prior offenses .....		+4
B. Violence in current offense, and any felony violence in one prior offense .....		+3
C. Violence in current offense .....		+2
D. No violence in current offense and any felony violence in two or more prior offenses .....		+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence .....		+2
F. No violence in current offense and any felony violence in one prior offense .....		+1
Category III: Death of Victim or High Level Violence		
<b>Note:</b> Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.		
A. Current offense was high level or other violence with death of victim resulting .....		+3
B. Current offense involved attempted murder or violence in which death of victim would have been the probable result .....		+2
C. Current offense involved high level violence (other than homicide or attempted murder) .....		+1
Base Point Score (Total of Categories I-III)		
Category IV: Negative Institutional Behavior		
<b>Note:</b> Use the highest applicable subcategory. If no subcategory is applicable, score = 0.		
A. Aggravated negative institutional behavior involving:		
(1) assault upon a correctional staff member, with bodily harm inflicted or threatened,		
(2) possession of a deadly weapon,		
(3) setting a fire so as to risk human life,		
(4) introduction of drugs for purposes of distribution, or (5) participating in a violent demonstration or riot: .....		+2
B. Ordinary negative institutional behavior .....		+1

POINT ASSIGNMENT TABLE—Continued

	(Salient factor score)
Category V: Program Achievement	
<b>Note:</b> Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. No program achievement .....	0
B. Ordinary program achievement .....	-1
C. Superior program achievement .....	-2
Total Point Score (Total of Categories I-V).	

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

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

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

- (i) Murder;
- (ii) Voluntary manslaughter;
- (iii) Arson of an occupied (or potentially occupied) building;
- (iv) Forcible rape or forcible sodomy (first degree sexual abuse);
- (v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;
- (vi) Burglary of a residence while armed if a victim was in the residence at the offense;
- (vii) Obstruction of justice through violence or threats of violence;
- (viii) Any offense involving sexual abuse of a person less than sixteen years of age;
- (ix) Any felony resulting in mayhem, malicious disfigurement, or other *serious bodily injury* (See Definition No. 3);
- (x) Any offense defined below as *other violence* in which the offender intentionally discharged a firearm;

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

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

- (i) Robbery;
- (ii) Residential burglary;
- (iii) Felony assault;
- (iv) Felony offenses involving a threat, or risk, of bodily harm;
- (v) Felony offenses involving sexual abuse or sexual contact.

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

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

- (i) Reflected in the offense of conviction, or
- (ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) if the prisoner served more than six months in prison for the original offense before commencement of probation.

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

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

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

(9) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under

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

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

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

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

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

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

Total points	Guideline recommendation
(1) If Points = 0	Parole at initial hearing with conditions established to address treatment needs;

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

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

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

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

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

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

(l) *Guidelines for decisions at subsequent hearing—Youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall

take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

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

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

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

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

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

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

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

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

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

(ii) *More serious parole risk:* The offender is a more serious parole risk

than indicated by the total point score because of—

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

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

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

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

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

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

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

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

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

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

(ii) *Other factors:*

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

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

[63 FR 39176, July 21, 1998, as amended at 63 FR 57061, Oct. 26, 1998; 64 FR 5613, 5614, Feb. 4, 1999]

**§ 2.81 Effective date of parole.**

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a

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grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

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

### **§ 2.82 Release planning.**

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

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

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

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

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the case and issue a new grant of parole.

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

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

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

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

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

### **§ 2.83 Release to other jurisdictions.**

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

### **§ 2.84 Conditions of release.**

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

(1) Obey all laws;

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

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

(4) Refrain from visiting illegal establishments;

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

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

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

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

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

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

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

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

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

### § 2.85 Release on parole.

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

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

(c) After a prisoner has been granted a parole effective date, the institution

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

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

### § 2.86 Mandatory release.

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

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

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

### § 2.87 Reparole.

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at §2.21, which shall include the establishment of a presumptive or effective release date pursuant to §2.12(b) and interim hearings pursuant to §2.14. However, if the prisoner is also eligible for parole on a new DC Code felony sentence that has been aggregated with the prisoner's parole violation term, or

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is a youth offender serving the remainder of a Youth Rehabilitation Act sentence following revocation of parole, the applicable guideline at § 2.80 (adult or youth) shall be applied in lieu of such provisions. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

[64 FR 5613, Feb. 4, 1999]

### **§ 2.88 Confidentiality of parole records.**

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

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

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

### **§ 2.89 Miscellaneous provisions.**

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

- 2.5 Sentence aggregation.
- 2.7 Committed fines and restitution orders.
- 2.8 Mental competency procedures.
- 2.10 Date service of sentence commences.
- 2.16 Parole of prisoner in State, local, or territorial institution.
- 2.19 Information considered.
- 2.22 Communication with Commission.
- 2.23 Delegation to hearing examiners.
- 2.32 Parole to local or immigration detainers.
- 2.34 Rescission of parole.
- 2.56 Disclosure of Parole Commission file.
- 2.63 Rewarding assistance in the prosecution of other offenders: criteria and guidelines.

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2.66 Aggregated U.S. and D.C. Code sentences.

[63 FR 39176, July 21, 1998, as amended at 64 FR 5614, Feb. 4, 1999]

### **§ 2.90 Prior orders of the Board of Parole.**

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

## **PART 3—GAMBLING DEVICES**

Sec.

- 3.1 Definition.
- 3.2 Assistant Attorney General, Criminal Division.
- 3.3 Registration.
- 3.4 Registration to be made by letter.
- 3.5 Forfeiture of gambling devices.

AUTHORITY: 89 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

CROSS REFERENCE: For Organization Statement, Federal Bureau of Investigation, see subpart P of part 0 of this chapter.

SOURCE: Order No. 331-65, 30 FR 2316, Feb. 20, 1965, unless otherwise noted.

### **§ 3.1 Definition.**

For the purpose of this part, the term *Act* means the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 *et seq.*

### **§ 3.2 Assistant Attorney General, Criminal Division.**

The Assistant Attorney General, Criminal Division, is authorized to exercise the power and authority of and to perform the functions vested in the Attorney General by the Act. (See also 28 CFR 0.55(i).)

(28 U.S.C. 509 and 510)

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

### **§ 3.3 Registration.**

Persons required to register pursuant to section 3 of the Act shall register