

§ 2.65

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a case-by-case evaluation in which response to treatment programs, the seriousness of the offense, and the original parole prognosis are all weighed by the Commission with no one factor capable of excluding all others.

(f) *Parole violators.* Parole violators returned to an institution following a local revocation hearing shall normally be considered for reparole under this section at a hearing within six months of their arrival at the institution.

(g) *Early termination from supervision.*

(1) A review of the YCA parolee's file will be conducted at the conclusion of each year of supervision (following receipt of the annual progress report—Form F-3) and six months prior to the expiration of his sentence (after receipt of the final report).

(2) A YCA parolee shall not be continued on supervision beyond the time periods specified in the early termination guidelines (§2.43), unless case-specific factors indicate further supervision is warranted. The guidelines at §2.43 shall not be routinely used to deny early discharge to a YCA parolee who has yet to complete two (or three) years of clean supervision.

(3) The Commission shall consider the facts and circumstances of each YCA parolee's case, focusing on the risk he poses to the public and the benefit he may obtain from further supervision. The nature of the offense and parolee's past criminal record shall be taken into account only to evaluate the risk that the parolee may still pose to the public.

(4) In denying early discharge, the Commission shall inform the probation office by letter (with a copy to the YCA parolee) of the reasons for continued supervision. The reasons should pertain, whenever possible, to the facts and circumstances of the YCA parolee's case. If there are no case-specific factors which indicate that discharge should be either granted to denied and further supervision appears warranted, the Commission may inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

[53 FR 49654, Dec. 9, 1988, as amended at 55 FR 289, Jan. 4, 1990. Redesignated at 63 FR 39176, July 21, 1998]

§ 2.65 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

(a) *Applicability.* This regulation applies to all prisoners serving any combination of U.S. and D.C. Code sentences that have been aggregated by the U.S. Bureau of Prisons. Such individuals are considered for parole on the basis of a single parole eligibility and mandatory release date on the aggregate sentence. Pursuant to §2.5, every decision made by the Commission, including the grant, denial, and revocation of parole, is made on the basis of the aggregate sentence.

(b) *Basic policy.* The Commission shall apply the guidelines at §2.20 to the prisoner's U.S. Code crimes, and the guidelines of the District of Columbia Board of Parole to the prisoner's D.C. Code crimes.

(c) *Determining the federal guideline range.* The Commission shall first consider the U.S. Code offenses pursuant to the guidelines at §2.20, and shall determine the appropriate number of months to be served (the prisoner's "federal time"). The Commission shall deem the "federal time" to have commenced with the prisoner's initial commitment on the current aggregate sentence, including jail time.

(d) *Decisions above the federal guideline range.* The "federal time" thus determined may be a decision within, below or above the federal guidelines, but it shall not exceed the limit of the U.S. Code sentence, *i.e.*, the number of months that would be required by the statutory release date if the U.S. Code sentence is less than five years, or the two-thirds date if the U.S. Code sentence is five years or more. The D.C. Code criminal behavior may not be used as an aggravating offense factor, but may be used as predictive basis for exceeding the federal guideline range to account for the actual degree and/or seriousness of risk.

(e) *Scheduling the D.C. parole hearing.* The Commission shall then schedule a D.C. parole hearing to be conducted not later than four months prior to the parole eligibility date, or the expiration of the "federal time," whichever is later. At the D.C. parole hearing the Commission shall apply the point score system of the D.C. Board of Parole,

pursuant to the regulations of the D.C. Board of Parole, to determine the prisoner's suitability for release on parole.

(f) *Granting parole.* In determining whether or not to grant parole pursuant to the point score system of the D.C. Board of Parole, and the length of any continuance for a rehearing if parole is denied, the Commission shall presume that the eligible prisoner has satisfied basic accountability for the D.C. Code offense behavior. However, the Commission retains the authority to consider any unusual offense circumstances pursuant to 28 DCMR 204.22 to deny parole despite a favorable point score, and to set a rehearing date beyond the ordinary schedule. The Commission shall also consider whether the totality of the prisoner's offense behaviors (U.S. and D.C. Code) warrants a continuance to reflect the true seriousness or the degree of the risk that the release of the prisoner would pose for the public welfare. Nonetheless, the Commission shall not deny parole or order a continuance, solely on the ground of punishment for the U.S. Code offenses standing alone, or on grounds that have been adequately accounted for in a decision to exceed the federal guideline range.

(g) *Hearings.* The Commission shall, in accordance with § 2.12 of these regulations, conduct an initial hearing to determine the federal time. This portion of the decision shall be subject to appeal pursuant to § 2.26 of these regulations. A D.C. parole hearing to determine the prisoner's suitability for parole under the D.C. guidelines shall be conducted as ordered at the initial hearing. Prior to the D.C. parole hearing, statutory interim hearings shall be conducted pursuant to § 2.14 of these regulations, including an interim hearing at eligibility on the aggregate sentence if no other interim hearing would be held. After the D.C. parole hearing, rehearings shall be conducted pursuant to the rules and policy guidelines of the D.C. Board of Parole, if release on parole is not granted.

(h) *Revocation decisions.* Violations of parole are violations on the aggregate sentence, and a parole violation warrant is therefore issued under the authority of the aggregate sentence. With regard to the reparole decision, the

Commission shall follow the guidelines at § 2.21 of these rules, but rehearings shall be scheduled according to the guidelines of the D.C. Board of Parole.

(i) *Forfeiture of street time.* All time on parole shall be forfeited if required under § 2.52(c) of these regulations. If not, the Commission shall divide the total time on parole (street time) according to the proportional relationship of the D.C. sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the D.C. sentence pursuant to D.C. Code 24-206(a). For example, if the prisoner is serving a two-year D.C. Code sentence and a three-year U.S. Code sentence, the D.C. sentence is two-fifths, or 40 percent, of the total aggregate sentence. If he was on parole 100 days, he therefore forfeits 40 days. "Street time" is measured from the date of release on parole to the execution of the warrant or confinement on other charges.

[54 FR 27842, June 30, 1989, as amended at 57 FR 41395, 41396, Sept. 10, 1992. Redesignated at 63 FR 39176, July 21, 1998]

§ 2.66 Expedited Revocation Procedure.

(a) In addition to the actions available to the Commission under § 2.47(a) and (b), and under § 2.48, the Commission may offer an alleged parole violator an opportunity to accept responsibility for his violation behavior, to waive a revocation hearing, and to accept the sanction proposed by the Commission in the Notice of Eligibility for Expedited Revocation Procedure that is sent to the alleged parole violator.

(b) The following cases may be considered under the expedited revocation procedure:

(1) Cases in which the alleged parole violator has been given a preliminary interview under § 2.48, and the alleged violation behavior would be graded Category One or Category Two;

(2) Cases in which the alleged violator has been given a preliminary interview under § 2.48 and the proposed decision is continue to expiration of sentence, regardless of offense category; and

(3) Cases in which an alleged violator has received a dispositional review