

Department of Justice

§ 2.77

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.

§ 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 holding office.

(c) Pursuant to D.C. 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, by report of the responsible prison authorities, an outstanding response to 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 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.

§ 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 continued criminal activity; 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 prior to completion of the prisoner's minimum sentence.

(e) A prisoner, or the prisoner's representative, may apply for a medical

§ 2.78

28 CFR Ch. I (7-1-00 Edition)

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).

§ 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 the 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 (D.C. Code 24-265(c)(1)-(7)):

- (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.

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

(g) Notwithstanding any other provision of this section—

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

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

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24-204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s). The Commission must be satisfied that the prisoner has served a period of imprisonment sufficient to