

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. 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. 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 an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institu-

tional behavior 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

	Salient Factor Score
Category I: Risk of Recidivism	
10-8 (Very Good Risk):	+0
7-6 (Good Risk)	+1
5-4 (Fair Risk)	+2

POINT ASSIGNMENT TABLE—Continued

	Salient Factor Score
3-0 (Poor Risk)	+3
Category II: Current or Prior Violence (Type of Risk)	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D. No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1
Category III: Death of Victim or High Level Violence	
Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense 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, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed	+2
C. Current offense involved high level violence (other than the behaviors described above)	+1
Base Point Score (Total of Categories I-III)	
Category IV: Negative Institutional Behavior	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. 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
Category V: Program Achievement	
Note: 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.

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

- (i) Murder;
- (ii) Voluntary manslaughter;
- (iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;
- (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 with any weapon if a victim was in the residence during 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) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph (g)(4) of this section that results in *serious bodily injury* as defined in paragraph (g)(3) of this section;

(x) Any offense defined as *other violence* in paragraph (g)(4) of this section 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

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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) rather than as part of the current offense, 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 II(A-D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

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

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

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

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

(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;

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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 the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's total point score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(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:

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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 the 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) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial

and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

(3) 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) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; 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) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

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

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

(4) Factors that may warrant a decision below the guidelines 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) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (m)(4) of this section; or

(C) Clearly exceptional program achievement.

§ 2.81 Reparole decisions.

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 eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, or 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. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

§ 2.82 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