

Department of Justice

§ 2.34

(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 adviser 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 adviser shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

(d) When the prisoner has an unsatisfied fine or restitution order, a reasonable plan for payment [or performance of services, if so ordered by the court] shall, where feasible, be included in the parole release plan.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977, as amended at 50 FR 36422, Sept. 6, 1985]

§ 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 a disciplinary hearing officer 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 90 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) A hearing before a disciplinary hearing officer 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.

[44 FR 3406, Jan. 16, 1979, as amended at 45 FR 59871, Sept. 11, 1980; 47 FR 2313, Jan. 15, 1982; 54 FR 15173, Apr. 17, 1989]