

§ 2.8

28 CFR Ch. I (7-1-10 Edition)

notified that failure to satisfy this condition shall result in retardation of parole under the provisions of § 2.28(e).

[48 FR 44527, Sept. 29, 1983, as amended at 50 FR 36422, Sept. 6, 1985]

§ 2.8 Mental competency proceedings.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by the hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is mentally incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review.

(1) In the case of a prisoner, if the Regional Commissioner concurs with their findings, the Commissioner shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the proceedings. The Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, the Commissioner

shall reschedule the hearing for the earliest feasible date.

(2) In the case of a parolee in a revocation proceeding, the Regional Commissioner shall postpone the revocation hearing and order that the parolee be given a mental health examination in a suitable facility of the Bureau of Prisons or the District of Columbia. The postponed revocation hearing shall be held within 60 days, or as soon as a satisfactory mental health report is submitted. The Regional Commissioner shall order that appointment of counsel be sought in any case where the parolee does not have counsel for the revocation hearing. If the parolee's mental incompetency is raised at a preliminary interview or probable cause hearing, the Commission (or hearing official) will make a determination of probable cause and, if probable cause is found, schedule a revocation hearing as provided in this paragraph.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

(e) At a postponed revocation hearing under this section, the hearing examiner shall make a preliminary determination as to the parolee's mental competency, taking into account all available mental health reports, any evidence submitted on the parolee's behalf, any report from counsel as to counsel's ability to communicate with the parolee, and the parolee's own responses to the examiner's questioning.

(1) If the hearing examiner determines the parolee to be mentally competent, the examiner shall conduct the revocation hearing. If counsel has previously asserted the parolee's incompetence, the examiner shall offer counsel a brief recess to consult with the parolee before proceeding.

(2) If the hearing examiner determines the parolee to be mentally incompetent, the examiner shall conduct the revocation hearing, and shall take into full account the parolee's mental condition in determining the facts and recommending a decision as to revocation and reparole.

(3) If the Commission revokes parole, the Commission may grant reparole

Department of Justice

§2.11

conditioned on the parolee's acceptance into a particular type of mental health program prior to release from prison, or may grant reparole with a special condition of supervision that requires appropriate mental health treatment, including medication. In cases where no other option appears appropriate, the Commission may grant reparole conditioned upon the parolee's voluntary self-commitment to a mental health institution until such time as the parolee has sufficiently recovered for the Commission to permit the parolee's return to supervision.

(4) If the Commission finds that the parolee did not commit the charged violations of parole, but also finds that the parolee is unable to fulfill the normal obligations of a parolee by reason of his mental condition, the Commission may reinstate the parolee to parole with any appropriate special condition, including the special condition, if necessary, that the parolee voluntarily commit himself to a mental institution until such time as the parolee has sufficiently recovered for the Commission to permit a return to supervision.

[44 FR 3408, Jan. 16, 1979, as amended at 68 FR 70711, Dec. 19, 2003]

§2.9 Study prior to sentencing.

When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the Bureau of Prisons.

[50 FR 36423, Sept. 6, 1985, as amended at 68 FR 41528, July 14, 2003]

§2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however*, That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee:

- (1) Is on court-ordered bail;
- (2) Is in escape status;
- (3) Has absconded from parole supervision; or
- (4) Comes within the provisions of paragraph (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 47 FR 36634, Aug. 23, 1982]

§2.11 Application for parole; notice of hearing.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to §2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.