

DEPARTMENT OF JUSTICE**Parole Commission****28 CFR Part 2****Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code**

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending the Interim Rules that went into effect on August 5, 1998 for parole-eligible D.C. Code prisoners under the National Capital Revitalization and Self-Government Improvement Act of 1997. The interim rules, which are republished in their entirety in this publication, include a number of amendments intended both to improve clarity and to provide more explicit policies with regard to the setting of release dates and departures from the guidelines.

DATES: *Effective Date:* May 15, 2000.

Comment Date: Comments must be received by June 30, 2000.

ADDRESSES: Send comments to office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105-33, the U.S. Parole Commission assumed the paroling jurisdiction of the Board of Parole of the District of Columbia on August 5, 1998. Interim rules, with a request for public comment, were published at 63 FR 39172 (July 21, 1998), and have been amended twice since that date at 63 FR 57060 (Oct. 26, 1998) and at 64 FR 5611 (Feb. 4, 1999).

In the light of the Commission's experience under these interim rules, the rules are now being republished to include a variety of amendments ranging from minor drafting improvements to some more significant issues of policy and procedure.

The more significant issues include: (a) A provision requiring the concurrence of two Commissioner votes on all final decisions, with three

Commissioner votes required if an examiner panel decision is rejected; (b) a provision allowing the Commission to establish a presumptive parole date for any prisoner whose total point score under the guidelines at § 2.80 will permit a grant of parole at the next rehearing (assuming continued positive programming); (c) a provision requiring that departures from the guidelines be consistent with the result indicated by the guidelines for other prisoners with equivalent risk levels; (d) a provision requiring that the factors justifying an upward departure be fully accounted for in the initial continuance whenever possible; and (e) a provision allowing the Commission, upon rescinding a parole grant based upon the prisoner's misconduct, to sanction the misconduct by reference to the guidelines at § 2.36 if the misconduct is not sufficiently serious to warrant increasing the prisoner's total point score by one full point under § 2.80.

The new presumptive date provision described above is intended to increase the ability of prisoners and prison officials to accomplish the goals of the release planning process well in advance of the actual release of the prisoner. Timely release planning is currently a serious issue for prison administrators. The setting of a presumptive release date will not deprive the prisoner of the rehearing that would normally be conducted, except in instances where the Commission decides to reopen the case and grant the prisoner an earlier date of parole on the record. Setting a presumptive parole date up to nine months from the scheduled rehearing date will be consistent with the outcome otherwise expected by the prisoner, *i.e.*, a rehearing followed by the granting of a parole effective date 6 to 9 months from the date the rehearing was held. For cases in which parole is denied through an upward departure, the decisionmaking policies described above should be regarded as essential principles governing the application of any modern parole guideline system.

Finally, the Commission decided not to amend its rules to change the existing requirement that a parole effective date, once granted, shall not be retarded more than 120 days for release planning purposes without a hearing. The Commission has experienced frequent requests from prison officials for the retarding of parole dates based upon significant delays in moving parole grantees to pre-release halfway houses. The Commission is working with prison officials in both District of Columbia and federal facilities to expedite the halfway house placement and release

planning process, and will retain the 120-day limit. If release planning delays have continued beyond the 120-day limit, the Commission will either grant parole or place the inmate on the next docket for a special reconsideration hearing. A special reconsideration hearing will be scheduled whenever it appears that the risk level presented by the inmate is such that halfway house placement (or other missing component of the release planning process) will be essential for the parole of the prisoner to meet the basic statutory criteria at D.C. Code 24-204. For prisoners who are already in halfway houses at the 120 day point, the Commission will order an appropriate retardation of the release date on the assumption that such prisoners will not wish to be returned to a prison facility for a special reconsideration rehearing.

Implementation

The regulations set forth below will be applied to all prisoners serving parole-eligible felony sentences under the District of Columbia Code, except that the guidelines in § 2.80 will be applied only to prisoners for whom the initial parole hearing is conducted on or after August 5, 1998. Any provision in these regulations that refers to the jurisdiction of the Parole Commission over District of Columbia Code parolees is intended to refer to the exercise of the authority that will be transferred to the U.S. Parole Commission on August 5, 2000.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these amended interim rules do not constitute a significant rule within the meaning of Executive Order 12866. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Subpart C is revised to read as follows:

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

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Subpart C—District of Columbia Code: Prisoners and Parolees**§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.**

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, 111 Stat. 712, and D.C. Code 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners who are serving sentences for felony offenses, and who are eligible for parole by statute, including offenders who have been returned to prison upon the revocation of parole or mandatory release. (D.C. Code 24–208). The above authority shall include youth offenders who are committed to prison for treatment and rehabilitation based on felony convictions under the D.C. Code. (D.C. Code 24–804(a).)

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate. (D.C. Code 24–201(c).)

(d) The Commission shall have authority to grant parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court. (D.C. Code 24–263 through 267.)

(e) The Commission shall have authority over all District of Columbia Code felony offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. (D.C. Code 24–206.)

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. The Commission may then conduct an initial hearing or grant an effective date of parole on the record. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible adult prisoner who has applied for parole shall be held at least 180 days prior to such prisoner's date of eligibility for parole. The initial hearing for a committed youth offender shall be scheduled during the first 120 days after admission to the institution that is responsible for developing his rehabilitative program.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner for whom an initial hearing has been ordered shall appear in person before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support. If the examiner determines that the available file material is not adequate for this purpose the examiner may order the hearing to be postponed to the next docket so that the missing information can be requested.

(b) Parole hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b). A prisoner appearing for a parole hearing in a facility other than a federal facility shall not be accompanied by counsel or any other person (except a staff member of the facility) except in such facilities as the Commission may designate as suitable for the appearance of representatives.

(d) Prehearing disclosure of file material will be available to prisoners and their representatives only in the case of prisoners confined in federal facilities, and pursuant to § 2.55.

(e) A victim of a crime, or a representative of the immediate family of a victim if the victim has died, shall have the right:

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. In lieu of appearing at a parole hearing, a victim or representative may request permission to appear before an examiner (or other staff member), who shall record and summarize the victim's or representative's testimony. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for

confidentiality by the victim or representative.

(f) Attorneys, family members, relatives, friends of the prisoner, or other interested persons desiring to submit information pertinent to any prisoner may do so at any time, but such information must be received by the Commission at least 30 days prior to a scheduled hearing in order to be considered at that hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing. An office visit at a time other than set forth in this paragraph may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22.

(g) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

(h) Because parole decisions must be reached through a record-based hearing and voting process, no contacts shall be permitted between any person attempting to influence the Commission's decision-making process, and the examiners and Commissioners of the Commission, except as provided in this subpart.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after the prisoner has served the minimum term of the sentence imposed, if the following criteria are met:

- (1) The prisoner has substantially observed the rules of the institution;
- (2) There is a reasonable probability that the prisoner will live and remain at liberty without violating the law; and
- (3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment in respect to the crime of which the prisoner has been convicted,

and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c). All final parole decisions (granting, denying, or revoking parole) shall be based on the concurrence of two Commissioner votes, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. All other decisions may be based on a single Commissioner vote, except as expressly provided in these rules.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration").

(b) The first reconsideration date shall be calculated from the prisoner's

eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct *nunc pro tunc* a combined initial hearing and such rehearings as would otherwise have been held during the delay.

(c) Notwithstanding the provisions of paragraph (a), the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release. The scheduling of a reconsideration date does not imply that parole will be granted at such hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the 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 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 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 institutional 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
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,	

POINT ASSIGNMENT TABLE—Continued

	Salient Factor Score
(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 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;
(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:

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 allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

§ 2.83 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of

any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by a Community Supervision Officer, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) A Commissioner may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence;

(2) Evidence that the parolee will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission;

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

§ 2.84 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a

facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia.

§ 2.85 Conditions of release.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificate issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his release, he shall report to the Community Supervision Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his supervision office, he shall communicate with the U.S. Parole Commission, Chevy Chase, Maryland 20815-7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the Community Supervision Officer to whom he is assigned within three days, he shall report instead to the nearest U.S. Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from his Community Supervision Officer.

(4) The parolee shall notify his Community Supervision Officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his Community Supervision Officer between the first and third day of each month. He shall also report to his Community Supervision Officer at other times as the officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall report within two days to his Community Supervision Officer (or supervision office) if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency without authorization from the Commission.

(8) The parolee shall work regularly unless excused by his Community Supervision Officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his Community Supervision

Officer any changes in employment or employment status.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer controlled substances (marijuana or narcotic or other habit-forming drugs) unless prescribed or advised for the parolee by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record without the permission of his Community Supervision Officer.

(11) The parolee shall not possess a firearm or other dangerous weapon.

(12) The parolee shall permit visits by his Community Supervision Officer to his residence and to his place of business or occupation. He shall permit confiscation by his Community Supervision Officer of any materials which the officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle(s), or on his person. The Commission may also, when a reasonable basis for so doing is presented, modify the conditions of parole to require the parolee to permit the Community Supervision Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the officer shall decide.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested by his Community Supervision Officer that is relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Community Supervision Officer in establishing an installment payment schedule.

(14) The parolee shall submit to a drug test whenever ordered by his Community Supervision Officer.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the

conditions of release. The ten-day notice requirement shall not apply to a modification of the conditions of parole in the following circumstances:

(1) Following a revocation hearing;

(2) Upon a finding that immediate modification of the conditions of parole is required to prevent harm to the parolee or to the public; or

(3) In response to a request by the parolee for a modification of the conditions of parole.

(c) The Commission may, as a condition of parole, require a parolee to reside in a community corrections center, or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this paragraph may be imposed only as an alternative to incarceration.

(e) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of his refusal to sign. To be considered for parole again, the prisoner must reapply for parole.

(f) With respect to prisoners who are required to be released to supervision through good time reductions (mandatory release), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the prisoner to sign his certificate.

(g) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of a warrant issued by the Commission, whether before or after the original expiration date, may be charged as a basis for revocation. In such a case, the warrant may be supplemented at any time.

(h) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

(i) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which shall include at least two periodic tests to determine whether parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment. In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing all pre-release drug tests administered by prison officials.

(j) Parolees are expected by the Commission to understand the conditions of parole according to their plain meaning, and to seek the guidance of their Community Supervision Officers before engaging in any conduct that may constitute a violation thereof. Community Supervision Officers may issue instructions to parolees to refrain from particular conduct that would violate parole, or to take specific steps to avoid or correct a violation of parole, as well as such other directives as may be authorized by the conditions imposed by the Commission.

§ 2.86 Release on parole; rescission for misconduct.

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind and a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (e.g., to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under 2.83(d). If a parole effective date is

rescinded for disciplinary infractions, an appropriate sanction shall be determined either by adding the appropriate points for negative institutional behavior to the prisoner's total point score, or by reference to § 2.36 if the misconduct is not sufficiently serious to warrant a continuance under § 2.80(j). A total point score of 0–2 shall be adjusted to a total point score of 3 prior to adding points for negative institutional behavior pursuant to the Point Assignment Table at § 2.80(f).

(c) After a prisoner has been granted a parole effective date, the institution shall notify the Commission of any serious disciplinary infractions committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee.

§ 2.87 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations, or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, except that if the offense of conviction was committed before April 11, 1987, such expiration date shall be less one hundred eighty (180) days. Every provision of this subpart relating to an individual on parole shall be deemed to include individuals on mandatory release.

§ 2.88 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of

parole records shall be confidential and shall not be disclosed outside the Commission except as provided in paragraphs (b) and (c) of this section.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c).

(c) Information other than as described in paragraph (b) of this section may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56.

§ 2.89 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in Subpart A of this part are also applicable to District of Columbia Code offenders:

Sec.	
2.5	(Sentence aggregation)
2.7	(Committed fines and restitution orders)
2.8	(Mental competency procedures)
2.10	(Date service of sentence commences)
2.16	(Parole of prisoner in State, local, or territorial institution)
2.19	(Information considered)
2.22	(Communication with Commission)
2.23	(Delegation to hearing examiners)
2.30	(False information or new criminal conduct; Discovery after release)
2.32	(Parole to local or immigration detainers)
2.56	(Disclosure of Parole Commission file)
2.63	(Rewarding assistance in the prosecution of other offenders: criteria and guidelines)
2.66	(Aggregated U.S. and D.C. Code sentences)

§ 2.90 Prior orders of the Board of Parole.

Any prior order entered by the Board of Parole of the District of Columbia shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission at a regularly scheduled hearing. It shall not constitute grounds for reopening a case that the prisoner is subject to an order of the Board of Parole that fails to conform to a provision of this part.

Dated: April 5, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

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