

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: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to incorporate into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the authority that will be assumed by the U.S. Parole Commission on August 5, 2000, with respect to felony offenders on parole. The authority of the District of Columbia Board of Parole to oversee the supervision and to revoke the paroles of felony offenders will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's regulations pursuant to federal rulemaking procedures.

DATES: 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 will be given, effective August 5, 2000, the authority presently exercised by the Board of Parole of the District of Columbia with respect to felony offenders on parole, including the jurisdiction to revoke parole and to modify the conditions of parole. See D.C. Code 24-1231(a)(2).

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia concerning the supervision of parolees, the release of parolees from active supervision, and the procedures governing the exercise of the authority to revoke parole, the Commission has

decided to republish these regulations, with appropriate amendments, in the Code of Federal Regulations. These regulations, when adopted, would be added to the regulations for District of Columbia offenders that were originally published at 63 FR 39172 (July 21, 1998) (as amended).

Overall, the proposed regulations would maintain the present functions and authority of the Board of Parole of the District of Columbia, with certain amendments to conform to federal policy and practice. For both Federal and D.C. Code parolees, parole revocation procedures ultimately derive from the same source: *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Morrissey* also describes the basic goals of parole supervision in a way that remains valid today for both the U.S. Code and D.C. Code parole systems. The amended regulations are intended exclusively to improve the ways in which the District of Columbia parole system is carried out, consistently with the approach taken in the *Morrissey* decision.

These improvements include a requirement for preliminary interviews as described in *Morrissey*, and an arrangement with the D.C. Public Defender Service whereby attorney representation would be obtained directly following the preliminary interview. This would be in contrast to the current D.C. Board of Parole rule that prohibits Board members and staff from assisting arrested parolees who wish to obtain the services of counsel. See 28 D.C.M.R. 219.9.

Although the procedures for release from active supervision would remain the same, the Commission proposes to supplement those procedures with explicit guidelines derived from the federal standards at 28 CFR 2.43 governing the early termination of parole for U.S. Code offenders. These guidelines are intended to ensure that the length of time a parolee spends under parole supervision is proportionate to the level of risk to the public safety suggested by the parolee's criminal offense and prior record, as measured by the Salient Factor Score and Base Point Score at 28 CFR 2.80.

The Commission also proposes to codify a procedure whereby an executed warrant may be withdrawn within 72 hours of execution in order to release the arrested parolee to another jurisdiction's warrant. (The Commission is not always aware, when it issues a warrant, that the parolee is also sought by other authorities.) In *Saylor v. U.S. Board of Parole*, 345 F.2d 100, 103 (D.C. Cir. 1965), the court endorsed such a procedure, stating that “* * * upon arresting a federal parolee as a parole

violation, the federal authorities should have some reasonable time and latitude in deciding whether to return him to the federal institution to serve the balance of his term or to surrender him to the local authorities for state prosecution.” In the Commission's view, a 72-hour period is a reasonable time for a decision to yield jurisdiction to local prosecuting authorities.

Finally, in all cases in which parolees are arrested on Commission warrants, it is the Commission's intent that their revocation hearings be held at the D.C. jail whenever feasible. For those parole violators who have been convicted and sentenced to new prison terms in other institutions, the Commission proposes to follow existing federal policy with regard to the holding of dispositional revocation hearings prior to the completion of the intervening sentence, and revocation hearings following release from the intervening sentence. See 28 CFR 2.47. In all respects, the proposed rules have been drafted to conform to District of Columbia law regarding the parole revocation process. See D.C. Code 24-205 and 24-206.

Proposed Implementation

The Commission proposes that the regulations set forth below be made effective as interim rules on August 5, 2000, with a further period for public comment. The Commission proposes to reevaluate the rules in the light of both public comment and operational experience before adopting final rules.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this proposed rule would not be a significant rule within the meaning of Executive Order 12866. The proposed rule would 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 will 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 Proposed Rules

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

PART 2—[AMENDED]

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

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

2. By adding §§ 2.91 through 2.105 to Subpart C to read as follows:

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Subpart C—District of Columbia Code Prisoners and Parolees

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Subpart C—District of Columbia Code Prisoners and Parolees

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§ 2.91 Supervision responsibility.

(a) Pursuant to D.C. Code 24–1233(c), the District of Columbia Court Services and Offender Supervision Agency (CSOSA) shall provide supervision, through qualified Community Supervision Officers, for all D.C. Code parolees and mandatory releasees under the jurisdiction of the Commission who are released to the D.C. metropolitan area. Individuals under the jurisdiction of the Commission who are released to districts outside the D.C. metropolitan area, or who are serving mixed U.S. and D.C. Code sentences, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

§ 2.92 Jurisdiction of the Commission.

(a) Pursuant to D.C. Code 24–431(a), the jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of

credit for time on parole in the case of revocation.

(b) The parole of any parolee shall run concurrently with the period of parole, probation, or supervised release under any other Federal, State, or local sentence.

(c) Upon the expiration of the parolee's maximum term as specified in the release certificate, the Community Supervision Officer shall issue a certificate of discharge to such parolee and to such other agencies as may be appropriate.

(d) A termination of parole pursuant to an order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the expiration of the offender's maximum term.

§ 2.93 Travel approval.

(a) The Community Supervision Officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a parolee under the supervision of the D.C. Community Supervision Office of CSOSA shall be the D.C. Metropolitan area (as defined in the certificate of parole) for all purposes of residence, employment, or travel permission under this section.

§ 2.94 Supervision reports to Commission.

An initial supervision report to confirm the satisfactory initial progress of the parolee shall be submitted to the Commission 90 days after the parolee's release from prison, by the officer responsible for the parolee's supervision. A regular supervision report shall be submitted to the

Commission by the officer responsible for the supervision of the parolee after the completion of 12 months of continuous community supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the parolee, and the enforcement of the conditions of the parolee's supervision, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

§ 2.95 Release from active supervision.

(a) The Commission, in its discretion, may release a parolee or mandatory releasee from further supervision prior to the expiration of the maximum term or terms for which he or she was sentenced.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review shall also be conducted whenever release from supervision is specially recommended by the Community Supervision Officer.

(c) In determining whether to grant release from supervision, the Commission shall apply the following guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a parolee originally classified in the very good risk category and whose current offense did not involve violence, release from supervision may be ordered after two continuous years of incident-free parole in the community;

(2) For a parolee originally classified in the very good risk category and whose current offense involved violence other than high level violence, release from supervision may be ordered after three continuous years of incident-free parole in the community;

(3) For a parolee originally classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), release from supervision may be ordered after four continuous years of incident-free parole in the community;

(4) For a parolee originally classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, release from supervision may be ordered after three

continuous years of incident-free parole in the community;

(5) For a parolee originally classified in other than the very good risk category, and whose current offense involved violence other than high level violence, or whose prior record includes two or more episodes of felony violence, release from supervision may be ordered after four continuous years of incident-free parole in the community;

(6) For a parolee who was originally classified in other than the very good risk category and whose current offense or prior record involved high level violence (without death of victim resulting), release from supervision may be ordered after five continuous years of incident-free parole in the community;

(7) For any parolee whose current offense or prior record involved high level violence with death of victim resulting, release from supervision may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the parolee is unlikely to be a threat to the public safety.

(d) Decisions to release from supervision prior to completion of the periods specified in this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score (if originally classified in other than the very good risk category), or a less serious risk than indicated by a violent current offense or prior record (if any). However, release from supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(e) Cases with pending criminal charge(s) shall not be released from supervision until the disposition of such charge(s) is known. The term "incident-free" parole shall include both any reported violations, and any arrest or law enforcement investigation that raises a reasonable doubt as to whether the parolee has been able to refrain from law violations while on parole.

§ 2.96 Order of release.

(a) When the Commission approves a recommendation for release from active supervision, a written order of release from supervision shall be issued and a copy thereof shall be delivered to the releasee.

(b) Each order of release shall state that the conditions of the releasee's parole are waived, except that it shall remain a condition that the releasee shall not violate any law or engage in any conduct which might bring discredit to the parole system, under

penalty of possible withdrawal of the order of release or revocation of parole.

(c) An order of release from supervision shall not release the parolee from the custody of the Attorney General or from the jurisdiction of the Commission before the expiration of the term or terms being served.

§ 2.97 Withdrawal of order of release.

If, after an order of release from supervision has been issued by the Commission, and prior to the expiration date of the sentence(s) being served, the parolee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Commission may, in its discretion, do any of the following:

(a) Issue a warrant for the parolee's return to custody as a violator;

(b) Withdraw the order of release from supervision and return the parolee to active supervision; or

(c) Impose any special conditions to the order of release from supervision.

§ 2.98 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1)(i) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing; or

(ii) Issue a warrant for the apprehension and return of the offender to custody.

(2) A summons or warrant in paragraph (a)(1) of this section may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be temporarily withheld, a warrant may be issued by the Commission and held in abeyance, a warrant may be issued by the Commission and a detainer lodged with the custodial authority, or a warrant may be issued for the retaking of the parolee.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms, except that in the case of a prisoner who has been

mandatorily released from a sentence imposed for an offense committed before April 11, 1987, such summons or warrant may be issued only within the maximum term or terms less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and the forfeiture of time pursuant to D.C. Code 24-206(a).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

§ 2.99 Execution of warrant and service of summons.

(a) Any officer of any Federal or District of Columbia correctional institution, or any Federal or District of Columbia officer authorized to serve criminal process, to whom a warrant is delivered shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to him a copy of the warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the Community Supervision Officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the parolee has been executed or is outstanding at the time the Commission's warrant is executed, the

arresting officer may, within 72 hours of executing the warrant, release the parolee to such warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, if such action is consistent with the instructions of the Commission. In other cases, a parolee may be released from an executed but unwithdrawn warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the parolee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

§ 2.100 Warrant placed as detainer and dispositional review.

(a) When a parolee is in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment, a parole violation warrant may be lodged against him as a detainer.

(b) If the parolee is serving a new sentence of imprisonment and is eligible for parole under the Commission's jurisdiction, a dispositional revocation hearing shall be scheduled as soon as the parolee has applied for an initial hearing on the new sentence, or as soon as practicable if the parolee is serving a new sentence of one year or less. In such cases, the warrant shall not be executed except upon final order of the Commission. In any other cases, the detainer shall be reviewed on the record pursuant to paragraph (c) of this section.

(c) If the parolee is serving a new sentence of imprisonment that does not include eligibility for parole under the Commission's jurisdiction, the Commission shall review the detainer upon the request of the parolee. Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a dispositional revocation hearing to be conducted by a hearing examiner or an official designated by

the Commission at the institution in which the parolee is confined. In such case, the warrant shall not be executed except upon final order of the Commission.

(3) Let the detainer stand until the new sentence is completed. After the release of the parolee, and the consequent execution of the Commission's warrant, an institutional revocation hearing shall be conducted when the parolee is returned to federal custody.

(d) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Commission. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.105.

(1) The date the violation term commences is the date the Commission's warrant is executed. It shall be the policy of the Commission that the parolee's violation term (*i.e.*, the unexpired term that remained to be served at the time the parolee was released on parole) shall start to run only upon his release from the confinement portion of the sentence for the new offense, or the date of reparole granted pursuant to this subpart, whichever comes first.

(2) A parole violator whose parole is revoked shall be given recognition for all time in confinement for any new offense that is considered by the Commission as a basis for revocation for the limited purpose of satisfying the time ranges in the reparole guidelines at § 2.81. The computation of the prisoner's sentence, and forfeiture of all time on parole pursuant to D.C. Code 24-206(a), is not affected by such guideline credit.

§ 2.101 Revocation: Preliminary interview.

(a) *Interviewing officer.* A parolee who is retaken on a warrant issued by the Commission shall promptly be offered a preliminary interview by a Community Supervision Officer (or other official designated by the Commission). The purpose of the preliminary interview is to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a local or institutional revocation hearing should be conducted. Any Community Supervision Officer or U.S. Probation Officer in the district where the prisoner is confined may conduct the

preliminary interview, provided he or she is not the officer who recommended that the warrant be issued.

(b) *Notice and opportunity to postpone interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the warrant application has been given to the parolee as required by § 2.99(b). The interviewing officer shall advise the parolee that he may have the preliminary interview postponed in order to obtain an attorney (and/or witnesses and evidence on his behalf), and that he may apply for counsel to be assigned by the D.C. Public Defender Service or otherwise obtained. In addition, the parolee may request the Commission to obtain the presence of adverse witnesses (*i.e.*, persons who have given information upon which revocation may be based). Such adverse witnesses may be requested to attend the postponed preliminary interview if the parolee meets the requirements for a local revocation hearing under § 2.102(a). The parolee shall be given advance notice of the time and place of a postponed preliminary interview.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee and shall apprise the parolee of the evidence that has been presented to the Commission. The interviewing officer shall ascertain whether the parolee admits or denies each charge listed on the warrant application, as well as the parolee's explanation of the facts giving rise to each charge. The officer shall also receive the statements of any witnesses and documentary evidence on behalf of the parolee.

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with a recommended decision.

(1) If the interviewing officer's recommended decision is that there is no probable cause to believe that the parolee has violated the conditions of his release, a Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that there is probable cause to believe that the parolee has violated a condition (or

conditions) of his release, the Commissioner shall notify the parolee of the final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) *Release notwithstanding probable cause.* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceedings may be ordered in the Commission's discretion if it determines that:

(i) Continuation of revocation proceedings is not warranted despite the violations found; or

(ii) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and the parolee is neither likely to fail to appear for further proceedings, nor constitutes a danger to himself or others.

(e) *Conviction as probable cause.* Conviction of any Federal, District of Columbia, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no preliminary interview shall be conducted unless ordered by a Commissioner to consider additional violation charges (including, but not limited to, unadjudicated criminal offenses) that may be determinative of the Commission's decision regarding revocation and/or reparole.

(f) *Local revocation hearing.* A postponed preliminary interview may be conducted as a local revocation hearing by an examiner or other officer designated by a Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing. It shall be the Commission's policy to conduct a combined preliminary interview and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

§ 2.102 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with a full opportunity to contest the charges against him, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision;

(2) The parolee denies all charges against him; and

(3) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more

charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(b) If there are two or more charged violations, the hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits all the charged violations of the conditions of his release, or who is retaken following release from a sentence of imprisonment for a new crime, shall be given an institutional revocation hearing upon his return or recommitment to an institution. An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the parolee is being held. However, a Commissioner may, on his own motion, designate any case for a local revocation hearing. The difference in procedures between a "local revocation hearing" and an "institutional revocation hearing" is set forth in § 2.103.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Commission under § 2.101(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has provided otherwise.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement, or consents to a postponement, or by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by an examiner, hearing examiner panel, or other official designated by the Commission.

§ 2.103 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present both witnesses and documentary evidence in his behalf. At an institutional revocation hearing, the alleged violator may only present documentary evidence in his behalf, including statements taken from witnesses. At any hearing, the presiding hearing officer or examiner may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may, on the request of the alleged violator or on its own motion, require the attendance of adverse witnesses who have given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. A finding of good cause for the non-attendance of an adverse witness may be based on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony. Neither adverse nor favorable witnesses will be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees.

§ 2.104 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any person who has given information upon which revocation may

be based refuses, upon request by the Commission, to appear at a preliminary interview or local revocation hearing, the Commission may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

§ 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether immediate reparole is warranted or whether parole should be terminated pursuant to D.C. Code 206(a), and the parolee returned to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a

decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes.

(d) Pursuant to D.C. Code 24–206(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on parole (including any time the parolee may have spent in confinement on other sentences prior to the execution of the Commission's warrant).

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24–206(a) does not apply to prisoners serving sentences under the D.C. Youth Rehabilitation Act, to which D.C. Code 24–206(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: April 5, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

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