Education and Training Series

The Consequences of Alternative Sentences: A Presentation

Federal Judicial Center

FJC - ETS - 77 - 14

THE CONSEQUENCES OF ALTERNATIVE SENTENCES: A PRESENTATION

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Sentencing Institute
for the Second and Seventh Circuits
Morgantown, West Virginia
October 18, 1977

FJC-ETS-77-14

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PREFACE

This paper contains a presentation by three members of the Research Division of the Federal Judicial Center as delivered at the Sentencing Institute for the Second and Seventh Circuits convened at Morgantown, West Virginia on October 17 and 18, 1977. The purpose of the remarks is to describe the relationship between the formal sentence imposed by the judge and the subsequent treatment of the offender by the Parole Commission, the Bureau of Prisons, and the probation office. While statutory and case law detail a number of the differences among alternative sentencing options, the policies and practices of the agencies charged with postsentencing responsibility create other consequences not regularly detailed in the standard legal literature. It is the premise of these remarks that an appreciation of these consequences is necessary in the fashioning of appropriate sentences.

Included with the remarks of Messrs. Partridge, Chaset, and Eldridge are the materials distributed at the Institute.

Remarks of Anthony Partridge

Our subject this morning is the relationship between the formal sentence that you impose and the subsequent treatment of an offender by the agencies with postsentencing responsibility--the Parole Commission, the Bureau of Prisons, and the probation office. Specifically, we are concerned with how your choice among the alternative sentences available to you influences such things as the length of time an offender actually serves in prison, what kind of institution he serves in, and what kind of programs he is exposed to. Our premise is that the practices of these other agencies are an important part of the environment in which you sentence, and that you can't do your sentencing job well without knowledge of what to expect from them. So we come not to argue about their practices, but to describe them, and to explore the relationships between what you do and what they do.

On the parole side in particular, there have been important changes in practice in the last year and a half, some of them as recently as last month. So our presentation is to some extent an effort to bring you up to date about recent developments.

The division of labor here is that I am going to talk about sentencing adult offenders who do not have narcotics problems; Alan Chaset is then going to introduce some additional considerations that apply to young offenders and narcotics addicts; Alan will also have a few words to say about what happens when you send someone off for observation and study; Bill Eldridge will then wind up with some remarks about the implications of the changes that have already occurred in the relationship between the sentencing judge and the other agencies, and the further changes that seem to be coming along. All of us invite you to interrupt us as we go along if you have any questions about what we're saying.

In talking about the various alternatives open to you in sentencing an adult offender, I'm going to use as an example the gentleman whose curriculum vitae appears on page 1M of the materials we handed out this morning. His age isn't included here, but I am going to assume that he is 28. Acting on a tip, Secret Service agents got a warrant to search his apartment, where they found $15,000 in counterfeit Federal Reserve notes. He's pleaded guilty to one count of possessing counterfeit money with intent to defraud, and he is now awaiting sentence.

I want to talk first about what will happen if you sentence him to imprisonment for a year and a day or longer. As I'm sure you're all aware, the year-and-a-day sentence is back. Under the Parole Commission and Reorganization Act, the Parole Commission will not determine the release date if the sentence is for one year or less. But if the sentence is for a year and a day or more, the offender's release date will be determined by the Commission.

Under a policy that became effective last month, all offenders sentenced to more than one year but less than seven years will be entitled to an initial parole hearing within roughly their first four months after arrival at a Bureau of Prisons institution. So if you sentence our offender to less than seven years, he will get a parole hearing in about three or four months, even though he may not be eligible for parole until long after that. [28 C.F.R. § 2.12.] After this initial hearing the Parole Commission will give the offender a presumptive date of parole--that is, they will tell him, at this point, that he can expect to be released on a certain day if his conduct is good and if he comes up with an adequate release plan at the appointed time. So if you sentenced our

offender today, he would get his parole hearing perhaps in January or February, and the Commission might then tell him that his presumptive date of parole is October 18, 1980, and he can start counting the days. After the initial hearing and the setting of this presumptive release date, there will be interim hearings every eighteen months, except that the first interim hearings will be deferred until shortly before the parole eligibility date if that is more than eighteen months away. The regulations say [28 C.F.R. § 2.14(a)(3).] that, following an interim hearing, the Commission may do one of three things. First, it may order no change in the presumptive date. Second, it may advance a presumptive release date--that is, set an earlier date--but, and I quote, "it shall be the policy of the Commission that once set, a presumptive release date. . . shall not be advanced except under clearly exceptional circumstances." And third, it may retard--that is, postpone--a presumptive parole date for reason of disciplinary infractions.

And then, shortly before the presumptive parole date, there is to be a review of the file to determine whether the conditions of good conduct and a satisfactory release plan have been complied with. If the conclusion on review

of the file is favorable, out the offender goes. Otherwise, he is set down for a hearing to consider the unfavorable information.

So not only do we have the guideline system with which you're all familiar, but now the Commission is going to tell the offender at the beginning of his stay what their decision is about the length of his incarceration, unless the offender--through unsatisfactory conduct or through failure to come up with a suitable release plan--causes a delay.

If you sentence our offender to seven years or more, the system will be slightly different. The initial hearing will not be held until shortly before the parole eligibility date and then, if the Commission is unwilling to set a presumptive date that is within four years, they will set the offender off for another full scale reconsideration after four years. So if you sentence someone to seven years or more, he will not have the same early determination of a presumptive release date.

It's worth noting in this connection that, if you use a (b)(2) sentence of seven years or more, the initial hearing will come early, and the cycle of hearings will therefore be different from the cycle for someone sentenced

under the regular authority. There is no provision in such a case for a full-scale reconsideration as the one-third mark is approached. That problem of a different cycle for the (b)(2) sentences has been a problem for the Commission in the past, and it may be revived by the current regulations. Their position is that the Parole Commission and Reorganization Act authorizes their current practice.

I also note that there is some question under the new regulations whether the Commission still intends to pay attention to the offender's participation in institutional programs. The section that contains the guidelines says, as it has in previous versions, that the time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress. [28 C.F.R. § 2.20(b).] But the section on presumptive parole dates says that a presumptive parole date shall be contingent only upon a continued record of "good conduct" and the establishment of a suitable release plan, and the section on interim hearings says only that the presumptive parole date may be set back for reason of disciplinary infractions. So, at least once a presumptive parole date has been set, it would seem that it would

be honored, even if the offender's behavior falls somewhat short of "good institutional adjustment and program progress," so long as he satisfies what seems to be a less demanding standard of good conduct. Commission staff tell us that the intention is to continue to take account of program progress, but it isn't easy to find that intention in the portions of the regulations dealing with hearing procedures.

The presumptive parole date is, of course, determined in accordance with the Commission's guidelines. I'd like to turn now to them. There have been some changes here, too. On page 2M of our materials we have set out the current version of the salient factor scoring sheet. This is the revision of April 1977, unchanged in the regulations that became effective September 6, but changed substantially from the prior version. This sheet has been filled out for our possesser of counterfeit money.

As contrasted with the prior version of the salient factor score, this one gives more credit under Item A for the absence of prior convictions or for having few of them. It provides an additional point under item C for getting past your twenty-sixth birthday without having been committed. Under item D, you used to get a point if

the commitment offense did not involve auto theft; it now reads that you get the point only if the commitment offense did not involve either auto theft or check forgery or larceny. They've made it a little tougher to get the possible one point under item E; you can't get that point if you were a probation violator at the time of the current offense. The Commission has dropped the point that used to be given for having a twelfth grade education or better, and they have dropped the point for a release plan which contemplated that the offender would live with his wife or children.

The salient factor score is based on statistics developed by the Commission that indicate the likelihood of success on parole--in the sense of completing parole without violating--for various classes of offenders. Contrary to an impression that may have been left yesterday, it is my understanding that the Commission is not saying that high-risk offenders should be incarcerated longer in order to allow more time for their rehabilitation. They're merely saying that high-risk offenders should be incarcerated longer to keep them off the streets longer. So the philosophy reflected here is incapacitation, and not rehabilitation.

Well our friend with the counterfeit money had a salient factor score of 8, and if we carry that over to the adult guidelines on page 3M of the materials we find that a score of 8 gives him a good parole prognosis. Those characterizations of the salient factor scores have not changed. And possessing $1,000 to $20,000 of counterfeit money appears as an offense of moderate severity. There have been, this year, a number of changes in the severity categories, although this particular offense is not one of them. So the guideline range for our offender is 16 to 20 months.

Let me emphasize that what the Commission is saying here is that, if your sentence permits, and the offender satisfies the requirements of good conduct and an acceptable release plan, they expect to release him within that guideline range. And if your sentence doesn't permit that--if the parole eligibility date is after more than 20 months or if the mandatory release date is before 16 months, they'll come as close as they can.

Nothing could be further from the traditional concept of the parole function: that the function of a parole board is to determine when the offender has made sufficient rehabilitative progress so that he is ready to return to

society. The Commission today sees as a major function the reduction of unwarranted disparity in the sentences that are imposed by the judges. So not very long after you sentence they're going to give an offender a presumptive parole date, and they're going to do it almost entirely on the basis of information that was available to you. And, let me repeat, their policy is that they expect that date to be within the guideline range if your sentence does not constrain them.

The Commission says that the severity scale in the guidelines is to be applied to the offender's "offense behavior"--that is, to the conduct that brought him into trouble with the law--rather than to the offense of which he was convicted, perhaps after plea bargaining. Thus, if our offender had pleaded guilty to possession of counterfeit currency but had in fact been found with a printing press in his apartment, the Commission would probably treat it as a manufacturing case, with a severity rating of "high" rather than "moderate." On page 4M of our materials, we've reprinted a brief Commission policy statement on the use of "offense behavior." The practice of using "offense behavior" has been sustained by the Second Circuit. [Billiteri v. U.S. Board of Parole,

541 F.2d 938 (1976)]. The Seventh Circuit has apparently not ruled on the question.

We are told by the Commission that, when probation officers try to anticipate the guideline periods for particular defendants, many of them miss the significance of the "offense behavior" policy. They classify the offense of conviction rather than the offense behavior, and they therefore underestimate the likely period of incarceration. So that's something that you may wish to have an eye out for.

Now let's take stock for a minute. What effect does the formal sentence have on the duration of incarceration under current Parole Commission policy?

First, at the borderline between the year and a year and a day, it determines whether the Parole Commission has a role at all.

Second, it determines whether the Parole Commission has the power to apply its guidelines to the particular offender--and in general, sets the boundaries for their exercise of discretion.

Third, at the borderline between 7 years and just short of 7 years, it determines whether the offender will benefit from the determinacy afforded by the new policy on presumptive release dates.

Fourth, for sentences of 7 years or more, the use of (b)(1) or (b)(3) sentences can affect the timing of parole consideration hearings.

Fifth, and not to be forgotten, is that the length of your sentence may determine the duration of incarceration if the offender's behavior is not satisfactory.

The length of the formal sentence may also, of course, affect the duration of parole supervision after an offender has been released. Even if our offender gets out within the guideline range of 16 to 20 months, life may look different to him if you gave him a 6 year (b)(2) sentence from what it would look like if you gave him a 3 year regular sentence. But here again we have a recent change. The Parole Commission and Reorganization Act gives the Commission power to release people from parole early. And beyond that, it requires the Commission to discharge people from parole after 5 years unless it finds, after a hearing, that parole should be continued because there is a likelihood that the parolee will engage in criminal conduct. Regulations for the exercise of these new authorities have not yet been issued. I understand that they are imminent. I have no inside information on what they will say, but it is a fair bet that once

again, their thrust will be to reduce the impact of differences in the sentences meted out by judges.

Still another consequence of the length of the formal sentence is that it is likely to affect the institution to which the Bureau of Prisons will initially send the offender. So the 3 year sentence I just referred to would probably get our offender into a minimum security camp such as Allenwood, but the 6 year (b)(2) sentence would probably get him into a penitentiary such as Lewisburg or Terre Haute. Generally speaking, the current policy of the Bureau is to send men sentenced to 4 years or less to the minimum security camps, men sentenced to more than 4 years but not more than 5 years to medium security institutions, and men sentenced to more than 5 years to maximum security institutions. The initial assignment doesn't necessarily stick for the entire period of custody, however. A lot of people with long sentences will be found in the minimum security camps as they approach their release dates. The designation rules for female offenders are somewhat different, because the range of institutions to which females are sent is different.

I don't want to overstate the certainty of these Bureau of Prisons designation rules. Their first

imperative is that they have to assign people where there are beds, and as they experience an increasing problem of overcrowding, these general rules based on sentence length have to bend so that the first imperative can be satisfied. The rules may be fully operative in one section of the country, but bent badly out of shape somewhere else because of those considerations and a reluctance to send offenders too far away from home. Nevertheless, with all the qualifications, it is the general policy to make the kind of institution depend upon the length of the formal sentence.

Now, if you'll turn to page 5M of the materials, we have reprinted here the current version of the AO Form 235. The change here in recent times is the addition of the legend down towards the bottom to the effect that the form will be disclosed to the offender and the Parole Commission unless the court directs otherwise. That legend is printed in red on the original forms, but it came out black on our xerox machine. It is of course based on a requirement of the Parole Commission Act [18 U.S.C., § 4208] that all materials considered by the Commission also be available to the offender. It is still possible to communicate with the Bureau of Prisons on a confidential

basis, but you can't do that with the Parole Commission any more.

Both the Bureau and the Parole Commission tell us that this form is important to them. They don't promise to do what you want, but they do promise to listen, and they tell us that they want to know what you know that should affect the way in which they exercise their responsibilities. The form was developed jointly by the Parole Board, the Bureau of Prisons, the Probation Division of the Administrative Office, and the Judicial Center. At least speaking for the Center, it's our view that the system is bound to work better if the people who follow you know what was on your mind. I would like to take a minute to suggest a few situations in which it seems to us particularly appropriate that it be used.

The first of these is the situation in which you have views about the defendant's culpability. The Parole Commission allows for the possibility of varying the severity category on the basis of aggravating or mitigating circumstances, but it doesn't seem to us that they pay as much attention to the individual culpability of defendants as most judges do. You may wish to suggest from time to time any mitigating or aggravating factors that in your

mind might cause them to vary the severity category and hence the guideline figure. I should add, in that connection, that the Commission is not particularly interested in your judgment as to when someone should be released--they say that's their job. But they are interested in facts or perceptions about the offense and the offender that might influence their judgment.

Another case in which use of the 235 seems particularly appropriate is where you have concluded that something in the presentence report is either incorrect or of doubtful validity. It seems to be the case in many districts that the original presentence report is forwarded by the probation office without correction, even in cases in which the judge has found it to be inaccurate. The Bureau of Prisons and the Parole Commission may then act on the basis of the inaccurate data. Until the system achieves a better routine way of revising the information in presentence reports in such cases, the 235 provides an excellent vehicle for making sure that inaccurate information is not passed on to the Bureau and the Commission.

Note, by the way, that things you say in open court during sentencing will not necessarily go any further than your court reporter's notebook. So unless you cause a

transcript to be forwarded, that is not a vehicle for communicating with the Bureau and the Commission.

Still another appropriate case for the use of the 235 is cooperation by the defendant with the prosecution. That sometimes is brought to the attention of the judge without appearing in the presentence report. If you give a light sentence because of cooperation, but the fact of cooperation never gets communicated to the Parole Commission, the offender may not get the benefit of the reward you thought you were providing.

Finally, the 235 is appropriate if you have views about what kind of an institution an offender should serve in, or what kind of programs he should be exposed to. It is Bureau of Prisons policy to give you a written explanation if they do not follow your suggestions.

I'd like to turn briefly now to the sentences of a year or less. Subject to the qualification that a prisoner can earn good time on sentences of six months or more, the release date in these cases is determined by the judge rather than by other authorities. It should also be noted that prisoners with very short sentences are often incarcerated in local jails rather than sent to the minimum security camps.

On page 6M of the materials, we have a brief table of what the sentencing alternatives are if the formal sentence is to imprisonment of a year or less. If the table is hard to follow, I ask that you send your complaints to Capitol Hill and not to the Judicial Center. It seems to me that only confusion can be created by the new authority to sentence people for terms of six months up to a year with the provision for release as if on parole. There is some question under that new authority whether the release date must be after exactly one-third of the stated sentence or may be any date specified after at least one-third of the stated sentence has been served. The table reflects the latter view, which is the view accepted by the Bureau of Prisons, as I understand it. So far as I know the issue has not yet been considered in any published opinion. If it should be decided that the release date must be after exactly one-third of the stated sentence, then the sentence with release as if on parole lets you do nothing that you couldn't do with a split sentence. If that interpretation is accepted, the one-year sentence would produce actual confinement of four months, with eight months of supervision to follow, which you could do equally well with a split. If the

decision goes the other way, then you can get a longer period of incarceration than you can with a split sentence, but you won't get much supervision to follow it, because the period of supervision has to end after a year from the beginning of confinement. So I don't think anybody's going to find this new authority very useful, but there it is.

Let me leave you with two thoughts.

First, if your probation office isn't telling you what to expect if you impose a particular sentence in a particular case, demand it of them. They can tell you how the Parole Commission guidelines apply to a particular defendant. They can tell you about the likely Bureau of Prisons designation for various sentence alternatives. And, if you are considering probation, they can tell you what program of supervision they recommend if you put the defendant on supervised probation. You don't have to be in the dark about any of these matters when you make your sentencing decision. And you may avoid some unpleasant surprises if you have the relevant knowledge.

Second, if you care what happens to defendants you sentence to prison terms--in the sense that you have particular expectations or desires that you would like

to see fulfilled, or particular knowledge that you think should be taken into account--use the Form 235. As I said earlier, the system is bound to work better if the Parole Commission and the Bureau know what was on your mind when you sentenced.

Remarks of Alan J. Chaset

Following the same basic ground rules just set down by Tony Partridge, I'm going to talk about some of the recent developments that impact upon your sentencing decisions when you are faced with the youthful offender or the drug addict. Also, I'm going to make some comments about the observation and study procedures available to aid you in your sentencing decisions. Much of what I will be saying, however, may not be new or recent in the strictest sense, but we feel strongly that it bears repeating.

As a starting point, I should note that legislation presently pending before Congress would do away with the array of sentencing alternatives for both the youth offender and the narcotic addict. As Carl Imlay told you yesterday it is considered highly likely that this legislation will pass. It is even more likely, however, that you will be called upon to sentence a number of young offenders and addicts before that legislation, once passed, takes effect. Therefore, until that time, sentencing must be performed under current provisions and with an eye towards current procedures.

Let's change one factor on our basic example: assume for now that our counterfeiter is 21 years old instead of 28. Let me now explore what differences this makes. The offender is now within the ambit of the Youth Corrections Act (sections 5005 through 5026 of Title 18 U.S.C.) And remember, you are required to sentence the offender under the youth provisions unless you make the explicit finding that the defendant will not benefit from the programs contemplated by the Act (Dorszynski v. U.S., 518 U.S. 424 (1974)). But what are these benefits?

Until recently, I would have told you that for purposes of institutional designation and availability of programming it made no difference whether you sentenced the 21-year-old under the youth or adult provisions. Our counterfeiter would be sent to a youth-type institution, like Morgantown, and would have the same opportunity to voluntarily participate in the rehabilitation and training programming. Nothing special happens merely because you sentenced under one statute or the other.

However, in May of this year, Judge Doyle of the Western District of Wisconsin ruled in Brown v. Carlson (431 F. Supp. 755) that the Bureau must make changes in

its present procedures to comply with the statutory requirements that YCA offenders be segregated from other offenders during classification and during incarceration. While this holding applies only to the federal facility at Oxford, Wisconsin and to offenders sentenced from that district, the Bureau is contemplating changes in anticipation of other law suits. Among the things they are considering is the actual separation of youth offenders from adult offenders at the various institutions. You should keep abreast of changes in this area through your probation officers.

One obvious benefit for the 21-year-old is that the Parole Commission has established a separate set of guidelines for release of offenders sentenced under the various youth provisions. As you can see on page 7M of our materials, the time ranges are shorter in each of the categories. Unlike designation, use of these guidelines <u>is triggered</u> by the statute you use and not by the age of the offender. In our basic example, the 21-year-old would score 7 points, scoring only 1 under item C, as his first commitment would be at age 21. He would still be in the "good" category and would serve 13-17 months under the Youth Guidelines. If sentenced as an adult, he would serve 16-20 months.

Yesterday, one of the judges mentioned that he never sentenced under YCA because he felt that, rather than benefiting from the programs, the youthful offender suffered a detriment. What I think he was saying is that, when the maximum punishment for the offense is a short one, the offender would get out sooner under an adult sentence rather than the six-year youth sentence. This is indeed true for the shorter maxima, but as a generalization youth offenders sentenced under YCA serve shorter sentences.

Before leaving our 21-year-old, let me briefly discuss another aspect of the Youth Act, the entitlement to a certificate setting aside conviction. This provision applies to all youth act sentences and to them alone. Our 21-year-old counterfeiter sentenced as an adult would not receive the benefit.

Let me add that the meaning of this certificate is ephemeral. The Parole Commission, in determining the number of prior convictions in item A, considers the set-aside still a conviction. The military specifically instructs prospective recruits that they must disclose it as a prior conviction. Indeed, some agencies consider it false swearing for a person to fail to report a

set-aside conviction. The case law is not clear either on the effects of the certificate; some courts treat it as an expungement of conviction while others reject this notion.

In summary, while the institutions and program availability are substantially the same, the youthful offender under YCA does benefit with a shorter sentence and a set-aside certificate.

Let me change the basic example one more time--our counterfeiter is again 28, but this time the presentence report indicates that he has a long history of drug abuse, including heroin addiction. What does this change of facts mean and what things do you need to know about how Prisons and Parole deal with addicts?

There are basically two sentencing alternatives available to you: Title II of the Narcotic Addict Rehabilitation Act (NARA) and the regular adult sentences. There are only a few basic differences, and in the future still fewer, that you must keep in mind:

(1) Offenders sentenced under NARA are usually sent to one of six institutions that have NARA units (Danbury, Milan, Lexington, Fort Worth, Terminal Island, and Alderson). Offenders ineligible for NARA (there are limits as to type

or severity of convicted offense and restrictions as to number of prior offenses) or for those addicts who you decide to sentence under the adult statutes, may be designated to an institution with a drug abuse program. There are programs at each level of the federal system save the camps. I use the term may because, as Tony Partridge has explained and as I'm sure you are already aware, designation is determined more by age and geography than any other factors. The Bureau is presently considering doing away with the special NARA units, however, opting instead for a generalized drug program. NARA offenders would be sent to an institution with a drug program, but not necessarily to one of the six places I just mentioned.

(2) The drug treatment programs both now and in the foreseeable future are basically the same--a wide variety of methods are used--Synanon games, Gestatt therapy, Transactional analysis, etc. It seems to depend more on what the personnel at the particular institution feel works best than on any stated Bureau policy. The important difference for NARA offenders, however, is that their participation is not voluntary--they must take part in the programming. And further, the NARA offender will get some programming

during his entire stay with the institution; it may be a G. E. D. course or particular job training, but he is always involved in something.

For the non-NARA offender, drug programming is voluntary. As an aside, however, I must note that while non-NARA offenders have the choice to participate or not, the parole guidelines are premised on adequate program progress. The offender is counseled as to this and is often told that drug programming appears appropriate for him. This is why, I feel, other speakers have used the expression "voluntary in quotation marks" when describing the freedom of choice here.

(3) Another important point to keep in mind is that the non-NARA offender will not be able to voluntarily participate in a drug program until his last 18-24 months with the institution. Yesterday, the judges of the Second Circuit were told that this rule did not apply to all institutions, but it is the general rule. There simply are not enough resources to give to all those who need therapy and it is the Bureau's policy that the best time to reach the addict is near the end of the stay, with the hope that the level of involvement will continue once back in the community. This means that, with all the transferring

that goes on, the initial designation is less important as to availability for programming--if you want the offender to have an opportunity to participate at the end of his stay, the 235 form becomes critical to communicate your desires. Add this to the list that Tony Partridge gave you earlier.

(4) Parole release is different for the two alternatives. As an adult, our 28-year-old would lose a point in item F because of drug dependence, giving a score of 7, and would be released in 16-20 months. If he did not complete a called-for drug program, it might be used as a reason at his prerelease review for retarding the release date. Under NARA, the separate set of guidelines--now the same as the youth guidelines, and found at page 7M of our materials, would get our addict out in 13-17 months. For the record, section 4254 calls for the Surgeon General to report to the Commission that the prisoner has made sufficient progress to warrant release and the Bureau must also report that the man is ready before the guidelines are applied. But in practice, the guidelines date for release is the same time for the submission of these two reports.

In summary, for the addict we have basically the

same programs at the same institutions. There are differences in release date and differences as to the voluntariness of participation.

For the final section of my presentation, I want to give out a little information and make a couple of pleas or pitches about the observation and study process.

The first and most important point is that the procedures should be used only when there is a real need for the report--only when some diagnostic information is needed to help you fashion the sentence. Don't use it to give offenders a taste of jail for 60-90 days--in most cases that objective can be met through the use of a split sentence or the special parole release rule of § 4205(F). You will thereby avoid the waste of the very short supply of psychiatric and other diagnostic services--and by a short supply, let me tell you that there are only fifteen full-time psychiatrists for the 30,000 plus inmates in the federal system.

And second, you should make greater use of local facilities for obtaining the necessary studies--such local studies are often cheaper, faster, and more effective ways of getting what you and your probation officer may need. It will probably be easier to communicate with these people

and easier to get the specifically framed report that you might find useful. Further, local clinics, universities, or private practitioners can be expected to have a far better grasp of facilities available to support supervision and treatment programs in the community than an overworked psychiatrist in a federal prison four states away. Thus, the local facility could give you a better picture of the individual's needs and the availability of service to meet those needs when you are already considering the probation alternative.

And finally, while there are some differences in the procedures among youth, NARA, or adult studies, the processes are sufficiently similar to allow me to make a few general comments about the process.

(1) The offender will be treated in many ways like any other new inmate offender received by the prison system. He will be designated to an institution in the usual way--youth to youth facility, NARA to a facility with a NARA unit, and an adult to an institution determined in large part by the normal designation policy which looks to the maximum sentence permitted for the offense.

(2) At the institution, he will be placed in an appropriate unit like any other new inmate following

ordinary classification procedures at the institution. He will be involved in the same programs and work projects as are other new inmates. He will not be separated from the general population.

(3) During the course of the 60-90 day study, he will spend several days being tested and interviewed. During the rest of his stay, he may be unsystematically observed by work and custodial personnel, but these observations of institutional adjustment do not appear to importantly contribute to the study results.

(4) The reports that come back will be summary reports--they will not reflect differences of opinions or the range of the opinions among staff members. They will ordinarily not clearly reflect what components of the observation had the major impact on the final recommendation. They will contain much information already in the presentence report. And the findings and recommendations will usually be put in very general language, due in part to the fact that the requests from you are themselves very general.

Let me stop here to make another and final pitch. It is important that you formulate very specific questions to the Prisons people when you order an observation

and study report. If the questions are specific, the chances of receiving a useful report are greatly enhanced. A simple order for commitment for observation and study, however, often produces the boiler plate response that I'm sure you've all seen and have often complained about. The Center is working with the Probation Division in the development of a position for a psychologist who would both help draft the referral questions and then aid in interpreting the responses.

I want to conclude my comments about the observation and study procedures with a little story. Recently, a judge in New Jersey sent an individual for a study and received a report indicating that long term intensive individual psychotherapy was needed by the defendant, and therefore the Bureau recommended a fairly lengthy period of incarceration. The judge then followed up on this recommendation to find out where the man would probably be confined and what treatment facilities were available there. He found out, to his surprise, that while he had received the recommendation from the Bureau of Prisons for a certain kind of treatment, the prison system did not have the means to provide that kind of service.

I use this example not to criticize the Bureau. On

the contrary, the Bureau, because of monetary restraints, the end of the draft, and for other good and sufficient reasons, has just not been able to get the psychiatric talent necessary to provide the full range of service. This means that interactions with psychiatrists during observation and study procedures will be limited and that the prescribed thereapy program that may be precisely what the offender needs may not indeed be available. What this means to you, of course, is that you must inquire not only as to what is needed, but also what are the chances that such can be provided in the federal institutional setting. It may well be that a local community facility may be better equipped to provide what the offender needs.

Remarks of William B. Eldridge

The previous discussions described the effects of the judge's choice of alternative sentences on the post-sentence experience of the committed offender. These presentations indicate that recent years have witnessed substantial changes in the way sentencing, corrections, and parole are operating. From all indications we may expect still more substantial changes in the near future. Imminent legislation will provide a new criminal code, a sentencing commission, and appellate review.

The procedures that have been discussed seem reasonably formulated to facilitate the internal system objectives of prison management and parole decision-making. Coming changes are arguably reasonable in their more pervasive goals of orderliness, even-handedness, and certainty of the law's response.

Everybody is busily making improvements in discrete segments of the sentencing process, but--insofar as I can see--there have not been sufficient hard looks at the overall structure to find out how these piecemeal changes are affecting the total process.

What we have today, and have had for a long time, is a mix of social value judgments with professional empiricism that is supposed to result in a process that reflects society's basic concerns and at the same time is supposed to use the best that social science has produced to identify those who may benefit from intervention, to provide treatment where appropriate, and to quantify risks associated with decisions at all levels of the process.

While the present process is most certainly a mix of social judgment and professional empiricism, the process defies attempts to distill a logical structure that embraces the participants and gives to each a role to play that clearly belongs to one and not to everyone. The biggest obstacle to making logic out of what we have--and what it appears we are going to have--is the locus of social judgments about seriousness of the offender's behavior. At present everybody seems to be in on this critical decision with the result that it gets decided over and over and over.

Meanwhile, the professional expertise that should complement social judgment appears to be fading in significance, contribution, and impact. This fading is inextricably tied up with the waning enthusiasm for the

medical model, but it is not clear what the cause and effect relationship has been. Has the medical model declined because empiricism is not strong enough to sustain it, or has empiricism declined because the lost faith in the model has constricted the opportunity to use social science expertise? Whatever the answer, it appears that wherever the role of professional expertise has narrowed, the hiatus has been filled by professionals entering the social judgment role.

To illustrate what I mean by a logical structure, let me describe what I thought the structure was when I began studying sentencing several years ago. Now, there's no particular reason anyone should care what I thought except that I put my perception of structure together from what I heard judges, probation officers and corrections people say. Therefore, you may be interested because it may be what you thought, at least in part. All the parts reflect what some of you thought and may still think.

I call it a logical structure because it does recognize the participation of the major actors in the sentencing process and allocates special responsibilities to each of them.

(1) <u>The legislature</u>. The legislature makes a social

judgment that certain activity is to be proscribed and makes a social judgment about the relative gravity of violating the proscription. The social judgment of the legislature is first expressed in a statute defining crime; this statement is in absolute terms. The second social judgment is expressed in a penalty statute; it is a relative statement in which higher or lower ranges of available penalties can be appreciated only by comparison of penalties made available for various offenses. It is a general judgment assessing relative harm to society-held values. Specific penalties for individual cases are left to judges or to judges and parole. In providing for judicial discretion, the legislature reaffirms the social value ascribed to individualization. Provision for parole is an expression of eternal optimism that change will occur and that change should be rewarded.

(2) The judge. Judges make social judgments in individual cases. The judge is aided by probation officers who draw on their collective experience and their collected information to inform the judge about norms and trends in sentencing and to offer prognoses, particularly about the threshold question of probation or incarceration. The probation officer says that chances are good

or poor that a particular offender will complete a probation term successfully and that the changes of success will be enhanced by attachment of certain conditions, the observance of which the probation officer will supervise. If chances are poor, the probation officer recommends the only alternative--prison. In connection with a prison recommendation, he may suggest that certain kinds of treatment be required that he believes will increase the prospects for success upon release.

Using everything before him--history, background characteristics, statistics, and professional recommendations--the judge makes the individual social judgment about this particular offender's behavior. With all things relevant taken into account, the judge decides that one offender's conduct warrants a sentence to probation and that another's requires five years in prison. Others advise in their particular areas of expertise, but the judge is the spokesman for society's values at the level of individual offenders.

(3) Prisons and Probation. Prisons and probation receive the sentenced offender. They are expected to intervene in the offender's life, providing increased capability for him or her to meet the expectations

attached to the sentence, correcting bad attitudes, supplying skills where deficiencies exist, and instilling new values.

(4) Parole. Parole is to review the postsentence progress of the committed offender and to decide whether and when expressed hopes of the legislature and judge have been realized; providing melioration when the hoped-for changes have occurred and withholding it when they have not.

This neat package makes the legislator and the judge the arbiters and spokesmen for assessing the seriousness of anti-social behavior. The legislators are qualified for the general judgment-rendering role by their representative status; judges are qualified for individual judgment rendering by their independent and impartial status.

The structure provides repeated opportunities for the infusion of professional empiricism, but it does not confuse the social judgment role with the expert specialist role.

Examination of present practices in the continuum from legislative proscription to release policy, however, shows that the specialization of function has eroded to

the point that social judgment is a primary responsibility at many stages of the sentencing process.

Probation, in recommending sentences to judges, is not speaking actuarially about the prospects of non-violative behavior if the judge follows probation recommendations. The recommendations have a mixed basis. When probation officers say, "we recommend a substantial period of incarceration for Jones and we recommend probation for Smith," they are not saying simply that in their experience Smith is more likely than Jones to complete probation successfully. That is a part of some recommendations. But almost always present is the judgment that Jones's behavior is sufficiently more serious to warrant a heavier social pronouncement by the judge. If the judge is willing for the probation officer to share his responsibility, that is fine, but recommendations ought to indicate clearly what is professional empiricism and what is social judgment.

Prisons people enter the social judgment arena less than other segments of the correctional process, but designation policies and program development are probably affected. Under new procedures by which the Bureau of Prisons will recommend early release, the weight

accorded to seriousness of criminal behavior will probably have a new effect. Strangest of all are the recommendations from diagnostic studies in which psychologists and psychiatrists appear to give substantial weight to severity of offense rather than confining themselves to recommendations that reflect their professional judgment about the needs of the offender.

Parole decisions clearly depend in large measure on the Commission's assessment of gravity of the offender's behavior--both the nature of the offense committed and the way in which it was committed. Parole guidelines, like probation recommendations, are a mix of actuarial experience and social judgment. The horizontal scale is empirical, the vertical scale is the same judgment that legislature and bench have already made. Thus, two persons with identical salient factor scores of 11 (the best prognosis available) may serve widely divergent sentences solely because of the Commission's assessment of the severity of their offenses. Indeed, only the varying judgment of severity brings different guidelines into play. Prior assessments by legislator and judge do not affect the calculus, though they may limit the decision range available to the commission.

I am not, by these observations, trying to suggest that anyone in the sentencing process should close his or her eyes to the question of seriousness nor that social judgments are not implicit in everyone's decision-making. I am suggesting that each participant in the process ought to be trying hard to clarify what his recommendations and decisions mean, both for his own thinking and for communication to others.

Let us consider what is happening in the present process by referring to the exemplary counterfeit offender. Let us suppose that in the sentencing district counterfeiting is a problem of substantial proportions involving organized crime, thereby raising serious social problems.

The probation officer's report recommends several years in prison. What does his recommendation mean? It may mean that in the officer's experience an offender like this one is a poor probation risk. Or, it may not speak to risk at all. It may simply mean that the officer thinks this is a grave offense that ought to be severely punished. If the court is expecting professional prognosis, the court will be seriously misled if the probation officer speaks from other bases. In such circumstances,

the probation report should be specific. A clear communication might say: "The offender's characteristics and background suggest that he has a strong chance of successfully completing a probation term under maximum supervision, but the seriousness of his offense in this district at this time argues against such a sentence. Accordingly, despite favorable prognosis, we do not believe probation is a satisfactory sentence. Instead we recommend a prison term that reflects the seriousness of the offense in this community."

There is then no opportunity for mistaking when the officer is speaking from professional empiricism and when he is participating in social judgment. The ability to distinguish is particularly important when we recognize that the presentence report is used repeatedly in the sentencing and correctional process.

Parole, through publication of its guidelines, has made reasonably clear how empiricism and social judgment interact to affect and predict parole decision-making. But parole will move an offense to a higher or lower severity classification when they think it is warranted--and warranted appears to depend mainly on their assessment of the seriousness of offense behavior. They will

exercise their independent judgment about seriousness, which appears to be their statutory responsibility under the new act. Judges should understand that when they use 18 U.S.C. § 4205(b), the primary effect is to increase the social judgment leeway of the Commission rather than to increase the opportunity to assess postsentence behavior.

What we see from all this is that the role-specialization as stated in my logical model was probably never realistic, never adhered to, and possibly undesirable. Instead we see every level in the process partaking somewhat of social judgment and somewhat of empirical forecasting, with the "somewhats" rarely being identified, questioned or tested.

With sentencing reform apparently on the imminent horizon adding a preoffense participation for a sentencing commission and a postsentence participation for appellate courts, the opportunity for still greater diffusion looms large.

If the process is, indeed, going to be reformed, it is a good time to insist that a logical total structure be developed--one that recognizes specialized functions for each of the participants and assigns clear

responsibilities to each of them--a structure that would avoid the constant reassment of social gravamen attached to criminal conduct. Let that responsibility clearly rest somewhere and not everywhere.

The sentencing institute act was designed in the hope that it would lead to formulation of "objectives, policies, standards, and criteria for sentencing." If you can return to your respective circuits and continue the consideration begun here, that goal of 28 U.S.C. § 334 will have been well served.

THE CONSEQUENCES OF ALTERNATIVE SENTENCES

Materials

Sentencing Institute for the
Second and Seventh Circuits
Morgantown, West Virginia
October 18, 1977

BASIC EXAMPLE

Offense: Possession of $15,000 in counterfeit Federal Reserve Notes (18 U.S.C. 472)

Prior record: Two prior convictions for larceny, one adult and one juvenile; sentenced to probation in both cases; probation satisfactorily completed in both cases

Drug abuse: None

Employment record: Unemployed for last 20 months

Maximum authorized sentence: $5,000 and/or 15 years

R-15 part 2 (SFS 76A)
(Ed. 4/77)

NOTICE OF ACTION - PART II - SALIENT FACTORS

2M

Register Number _____ Name Basic Example

ITEM A _____ 1

No prior convictions (adult or juvenile) = 3
One prior conviction = 2
Two or three prior convictions = 1
Four or more prior convictions = 0

ITEM B _____ 2

No prior incarcerations (adult or juvenile) = 2
One or two prior incarcerations = 1
Three or more prior incarcerations = 0

ITEM C _____ 2

Age at first commitment (adult or juvenile):
26 or older = 2
18 - 25 = 1
17 or younger = 0

*ITEM D _____ 1

Commitment offense did not involve auto theft or checks(s) (forgery/larceny) = 1
Commitment offense involved auto theft [X], or check(s) [Y], or both [Z] = 0

*ITEM E _____ 1

Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1
Has had parole revoked or been committed for a new offense while on parole [X], or is a probation violator this time [Y], or both [Z] = 0

ITEM F _____ 1

No history of heroin or opiate dependence = 1
Otherwise = 0

ITEM G _____ 0

Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community = 1
Otherwise = 0

TOTAL SCORE _____ 8

* NOTE TO EXAMINERS:
If item D or E is scored 0, place the appropriate letter (X, Y or Z) on the line to the right of the box.

INMATE COPY

FPI-MAR

Form R-3
Effective-11/1/77

ADULT

Guidelines for Decision-Making

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

3M

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW Escape [open institution or program (e.g., CTC, work release) - absent less than 7 days] Marihuana or soft drugs, simple possession (small quantity for own use) Property offenses [theft or simple possession of stolen property], less than $1,000	6-10 months	8-12 months	10-14 months	12-18 months
LOW MODERATE Alcohol law violations Counterfeit currency (passing/possession less than $1,000) Immigration law violations Income tax evasion [less than $10,000] Property offenses [forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell] less than $1,000 Selective Service Act violations	8-12 months	12-16 months	16-20 months	20-28 months
MODERATE Bribery of a public official (offering or accepting) Counterfeit currency (passing/possession $1,000 to $19,999) Drugs: Marihuana, possession with intent to distribute/sale [small scale (e.g., less than 50 lbs.)] "Soft drugs", possession with intent to distribute/sale [less than $500] Escape [secure program or institution, or absent 7 days or more - no fear or threat used] Firearms Act, possession/purchase/sale (single weapons, not sawed-off shotgun or machine gun) Income tax evasion ($10,000 to $50,000] Mailing threatening communication(s) Misprison of felony Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] $1,000 to $19,999 Smuggling/transporting of alien(s) Theft of motor vehicle (not multiple theft or for resale)	12-16 months	16-20 months	20-24 months	24-32 months
HIGH Counterfeit currency (passing/possession $20,000 to $100,000) Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale [medium scale (e.g., 50 to 1,999 lbs.)] "Soft drugs", possession with intent to distribute/sale ($500 to $5,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) Mann Act (no force - commercial purposes) Theft of motor vehicle for resale Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] $20,000 to $100,000	16-20 months	20-26 months	26-34 months	34-44 months
VERY HIGH Robbery (weapon or threat) Breaking and entering [bank or post office-entry or attempted entry to vault] Drugs: Marihuana, possession with intent to distribute/sale [large scale (e.g., 2,000 lbs. or more)] "Soft drugs", possession with intent to distribute/sale (over $5,000) "Hard drugs", possession with intent to distribute/sale (not exceeding $100,000) Extortion Mann Act (force) Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] over $100,000 but not exceeding $500,000	26-36 months	36-48 months	48-60 months	60-72 months
GREATEST I Aggravated felony (e.g., robbery: weapon fired - no serious injury) Explosive detonation (involving potential risk of physical injury to person(s) - no serious injury occurred) Robbery [multiple instances (2-3)] Hard drugs [possession with intent to distribute/sale-large scale(e.g., over $100,000)] Sexual act-force (e.g., forcible rape)	40-55 months	55-70 months	70-85 months	85-110 months
GREATEST II Aggravated felony-serious injury [e.g., injury involving substantial risk of death, or protracted disability, or disfigurement]. Aircraft hijacking Espionage Kidnaping Homicide (intentional or committed during other crime)	Greater than above - however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

NOTES: 1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 days (1 month) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes. "Soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD, and hashish.
7. Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense.

PAROLE BOARD POLICY STATEMENT ON USE OF "OFFENSE BEHAVIOR" IN DETERMINING SEVERITY RATINGS

4M

The following is an excerpt from a statement appearing in the Federal Register for Friday, September 5, 1975, in which the Parole Board discussed comments that had been received with respect to proposed regulations, and explained why some suggestions had been rejected:

> "Regarding the offense severity categories, one comment suggested that all ratings be based on offense of conviction only. A corollary suggestion was that all Federal statutory offense descriptions be listed on the severity scale. The Board presently considers the total circumstances of the offense committed (offense behavior) and exercises its best judgment as to the correct rating in each case. Rigidly codifying offenses by statutory section would preclude objective assessment of the actual offense behavior, and would place excessive reliance on convictions obtained more often by negotiation of pleas than by trial of the facts. Neither justice nor uniformity of treatment could be achieved with such a system, and the Board has, therefore, found the proposal unacceptable."

40 Fed. Reg. 41330.

REPORT ON SENTENCED OFFENDER BY UNITED STATES DISTRICT JUDGE

To Be Completed by the Probation Officer: 5M

Name _____ FBI No.: _____ DOB: _____

District: _____ Offense: _____ Sentence: _____

To Be Completed by the Sentencing Judge:

SENTENCING OBJECTIVES. Court's intent or purpose for sentence imposed.

COMMENTS ON TREATMENT NEEDS. In the court's opinion what treatment or training should the Probation Office or the Bureau of Prisons provide? (e.g., vocational, educational, medical, alcoholic, narcotic.)

RECOMMENDED INSTITUTION. Type of institution by classification (e.g., penitentiary, youth center, etc.), or by name (e.g., Leavenworth, Morgantown, etc.).

COMMENTS AND RECOMMENDATIONS RELATIVE TO PAROLE. Give comments regarding the appropriateness of parole in view of the present offense, prior criminal background and any mitigating or aggravating circumstances.

NO COMMENT ☐ *This form will be disclosed to the offender and the Parole Commission in connection with parole consideration, unless the court directs otherwise. (See 18 U.S.C. 4208)*

Original: *U.S. Probation Office* ***Signed*** _____

Sentencing Judge

c.c.: *2 copies to Bureau of Prisons institution designated for confinement* ***Typed*** _____ ***Date*** _____

FPI—SS—1-20-75—100M—806

SENTENCES TO IMPRISONMENT OF A YEAR OF LESS

Formal Sentence	Actual Time in Confinement	Probable Place of Confinement	Post-Release Supervision
"Regular" sentence: X months' imprisonment	As stated, except that "good time" can be earned on sentences of 6 months or more	Camp if sentence is for 90 days or more; otherwise jail	None
"Split" sentence: X months' imprisonment, the defendant to be confined for Y months and the remainder of the term to be suspended, followed by Z years' probation. Unsuspended portion of prison term cannot exceed 6 months. (18 U.S.C. 3651)	The unsuspended portion of the prison term, except that "good time" can be earned on sentences in which that portion is 6 months exactly	Camp if period of imprisonment is 5 months or more; otherwise jail	Up to 5 years, as specified by court
Sentence with release "as if on parole": X months, provided that the offender shall be released as if on parole after Y months. Stated sentence must be at least 6 months; release date must be after at least one-third of stated sentence. (18 U.S.C. 4205(f))	Until specified release date (unless earned "good time" requires earlier release)	Camp if stated sentence is for 90 days or more; otherwise jail	Until expiration of stated sentence

NOTE: "Good time" is at the rate of five days for each month of sentence when the sentence is for at least six months but not more than one year. (18 U.S.C. 4161)

Form R-4
Effective 11/1/77

YOUTH/NARA

Guidelines for Decision-Making

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

7M

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW Escape [open institution or program (e.g., CTC, work release) - absent less than 7 days] Marihuana or soft drugs, simple possession (small quantity for own use) Property offenses [theft or simple possession of stolen property] less than $1,000	6-10 months	8-12 months	10-14 months	12-18 months
LOW MODERATE Alcohol law violations Counterfeit currency (passing/possession less than $1,000) Immigration Law violations Income tax evasion (less than $10,000) Property offenses [forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell] less than $1,000 Selective Service Act violations	8-12 months	12-16 months	16-20 months	20-26 months
MODERATE Bribery of a public official (offering or accepting) Counterfeit currency (passing/possession $1,000 to $19,999) Drugs: Marihuana, possession with intent to distribute/sale [small scale (e.g., less than 50 lbs.)] "Soft drugs", possession with intent to distribute/sale (less than $500) Escape [secure program or institution, or absent 7 days or more - no fear or threat used] Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun) Income tax evasion ($10,000 to $50,000) Mailing threatening communication(s) Misprision of felony Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] $1,000 to $19,999 Smuggling/transporting of alien(s) Theft of motor vehicle (not multiple theft or for resale)	9-13 months	13-17 months	17-21 months	21-28 months
HIGH Counterfeit currency (passing/possession $20,000 to $100,000) Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale [medium scale (e.g., 50 to 1,999 lbs)] "Soft drugs", possession with intent to distribute/sale ($500 to $5,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) Mann Act (no force - commercial purposes) Theft of motor vehicle for resale Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] $20,000 to $100,000	12-16 months	16-20 months	20-26 months	26-32 months
VERY HIGH Robbery (weapon or threat) Breaking and entering [bank or post office-entry or attempted entry to vault] Drugs: Marihuana, possession with intent to distribute/sale [large scale (e.g., 2,000 lbs. or more)] "Soft drugs", possession with intent to distribute/sale [over $5,000] "Hard drugs", possession with intent to distribute/sale (not exceeding $100,000) Extortion Mann Act (force) Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property] over $100,000 but not exceeding $500,000	20-27 months	27-34 months	34-41 months	41-48 months
GREATEST I Aggravated felony (e.g., robbery: weapon fired - no serious injury) Explosive detonation (involving potential risk of physical injury to person(s) - no serious injury occurred) Robbery [multiple instances (2-3)] Hard drugs [possession with intent to distribute/sale-large scale(e.g., over $100,000)] Sexual act-force (e.g., forcible rape)	30-40 months	40-50 months	50-60 months	60-78 months
GREATEST II Aggravated felony-serious injury (e.g., injury involving substantial risk of death, or protracted disability, or disfigurement) Aircraft hijacking Espionage Kidnaping Homicide (intentional or committed during other crime)	Greater than above - however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

NOTES:
1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 days (1 month) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes. "Soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD, and hashish.
7. Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense.

NARCOTIC ADDICT REHABILITATION ACT OF 1966
[NARA]

Title I: Addicts charged with, but not prosecuted for, federal law violations

A. In lieu of trial, addict can choose commitment for treatment under custody of Surgeon General

B. Term: 3 years of evaluation, hospitalization and aftercare, supervision and rehabilitation

C. Possible dismissal of charges after 3 years

Title II: Addicts convicted of federal law violations

A. Sentenced to commitment for treatment under custody of Attorney General

B. Term: 10 year maximum with minimum 6 months institutional care before consideration for conditional release

Title III: Addict not charged with any offense

A. Addict or relative of addict voluntarily petitions court for civil commitment under custody of Surgeon General

B. Term: 6 months maximum hospitalization and 3 years maximum post-hospital supervision

Federal Correctional Institution, Morgantown, West Virginia

Structural Security: Minimum

Age Range: 14 to 24 at the time of commitment. Consideration will also be given to persons outside this age range providing their correctional treatment needs are compatible with the pograms available at Morgantown. Program emphasis is placed on completion of high school education, but individuals with other needs will be given consideration.

Service Area: Male inmates committed by Federal Courts. Persons who reside West of the Mississippi River will be considered on an individual basis. No direct commitments will be accepted by Morgantown without special designation from the Population Management Section of the Bureau of Prisons. Except in unusual situations, the Center is not approved for holdovers.

Parole Hearings: January, March, May, July, September and November.

Clinical Services: Out-patient care only. Two full-time psychologists, and one dentist, but only a part-time contract physician. All in-patient care is provided at local hospitals.

Housing: Six cottages. There are six functional units at Morgantown. Each provides general services.

Industries:

Special Training Opportunities: The program is basically designed to help the younger, less sophisticated person overcome social, psychological, and educational deficiencies. Treatment programs provide students with counseling, extensive interaction with community volunteers, escorted and unescorted town trips, and home furloughs.

Special Training Opportunities (cont'd): The educational program specializes in academic programs from illiteracy through high school with limited college level programming. Industrial literacy, i.e., producing trainable people, is the objective of the training program. However, there is limited capacity for in-depth skills training. Study and work release programs are limited.

The main thrust of the Morgantown's program is to provide short term (10 to 14 months) intensive treatment. Persons who would not likely be released in that time because of a serious offense such as Bank Robbery or because of his level of criminal sophistication will be considered on an individual basis. All indeterminate sentencing procedures (YCA, 4205 adult), short term regular (three years or less), and study and observation commitments are appropriate.

CORRECTED COPY AS OF AUGUST 11, 1977

10M

FRIDAY, AUGUST 5, 1977
PART III

federal register

DEPARTMENT OF JUSTICE

PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: The United States Parole Commission, Justice.

ACTION: Final rules.

SUMMARY: The Parole Commission has adopted a procedure whereby federal prisoners will be notified of their ultimate release dates at the outset of their terms of imprisonment. This procedure is necessary to reduce the degree of uncertainty with which federal prisoners presently serve their sentences of imprisonment. The purpose of the procedure is to achieve a significant degree of certainty while not foregoing the advantageous features of the parole system.

EFFECTIVE DATE: September 6, 1977, for all prisoners sentenced on that date or thereafter. For prisoners sentenced prior to September 6, 1977, the substantive provisions of the amended rules (setting presumptive release dates) will apply at the next scheduled in-person hearing (initial, review, rescission, or revocation).

FOR FURTHER INFORMATION CONTACT:

Michael A. Stover, Office of the General Counsel, United States Parole Commission, 320 First Street, NW., Washington, D.C. 20537, telephone 202-724-3092.

SUPPLEMENTARY INFORMATION:

(A) THE PROPOSAL AND ITS PURPOSE

On June 10, 1977, the United States Parole Commission published a proposal whereby Federal prisoners would be notified of their ultimate release dates at the outset of their terms of imprisonment (42 FR 29934). The purpose of this proposal, which is now adopted as a final rule, was to achieve a substantial reduction of indeterminacy in Federal prison sentences (i.e. increasing certainty on the part of the prisoner as to what his total incarceration will be), without foregoing the significant advantages of the present federal parole system. Among the advantages offered by the federal parole system are: (1) Release decision-making by a small, independent, collegial body of correctional experts adhering to a national parole policy (promoting reduction of unwarranted disparity in punishments); and (2) the ability to account for intervening factors not foreseeable at the time of sentencing, through systematic review of each prisoner's case (promoting fairness to the individual and avoiding excessive use of confinement).

(B) PUBLIC COMMENT

The proposal prompted numerous letters from the public, among which were letters from prisoners, families of prisoners, corrections officials, probation officers, one legislator, and one prison ministry organization. The majority of these letters endorsed the proposal because of the certainty it would bring to prisoners and to those awaiting a prisoner's return to society, thus increasing the stability of the prisoner's community support.

Corrections officials also favored the proposal. Chairman Ira Blalock of the Oregon State Parole Board wrote that a similar system adopted in Oregon has been administratively successful and generally beneficial. Chairman Blalock also pointed out that the proposal was consistent with the recommendations of criminologists and of the American Bar Association's Draft Standards Relating to the Legal Status of Prisoners (American Criminal Law Review, January 1977). Assistant Director Roy Gerard of the Federal Bureau of Prisons wrote that the new system will make prison management easier and more efficient, inmates will be better informed and less anxious, and the processing of parole procedures will be improved.

Finally, Representative Robert W. Kastenmeier, Chairman of the House Subcommittee on the Courts, Civil Liberties, and the Administration of Justice, and a key architect of the Parole Commission and Reorganization Act of 1976, wrote:

> I whole-heartedly endorse such a new rule. I believe it is entirely consistent with the intent of Congress that federal prisoners be provided with clear, consistent parole policies which will permit them to know at an early date when they can expect release.

This comment shared the position taken by the 1977 Report of the Senate Subcommittee on National Penitentiaries:

> First, the subcommittee must see that the Parole Commission continues to administer the guidelines system in a way that is consistent with the intention that indeterminancy be reduced to the extent consistent with the law.
>
> The legislation attempted to provide inmates with knowledge of their parole status, so that the typical inmate would know the prospective time of his release, plan for this, and not make release plans when he has no hope of early release. The legislation attempts to achieve this without creating procedural requirements that would be the basis for extensive and continuous litigation. At present, prospective parole information is not being given to all the prison population, and this would be of future concern to the Subcommittee. [at page 2 of the Report]

The most common criticism of the proposal from prisoners was its distinction between sentences of less than seven years and sentences of seven years or more. The effects of this demarcation are that: (1) A prisoner with a sentence of seven years or more and a minimum term of imprisonment must await the completion of his minimum term before receiving his initial hearing, whereas all prisoners with sentences of less than seven years receive an initial hearing at the outset of incarceration; and (2) in all of the longer sentences, a presumptive release date cannot be set if it would result in a date more than four years from the date of the initial hearing.

The seven-year mark as a divider between short and long sentences for the purpose of setting a prisoner's entitlement to hearings is a figure already selected by Congress at 18 U.S.C. 4208(h). That section uses the seven-year mark to distinguish between those sentences in which interim hearings are required every eighteen months and those sentences (of seven years or more) in which interim hearings are required every twenty-four months. Moreover, the Commission decided that, for its present administrative purposes, a four-year effective limit on the setting of presumptive release dates is a practical restriction, as well as one which coincides with the statutory scheme. Whether the limit may be expanded in the future is a question which the Commission reserves for further deliberation.

Other comments urged that the Commission adopt a similar policy with regard to federal parolees serving new federal sentences for crimes committed while on parole, by informing such prisoners at the outset of the total combined length of the new confinement and the consecutive parole violator term (the remaining time on the original sentence). This proposal raises substantial questions beyond the scope of the present rule-making (for example, the problem of federal parolees serving new state sentences, in whose situations the Commission could not set a combined release date). However, the proposal will be taken under study.

One comment suggested that the Commission's plan contained an inherent paradox, stating that "* * * if the purpose of parole is to determine the extent of rehabilitation and fitness for return to society, how can the [Commission] make such determinations without a longer period of incarceration?" The point this writer missed is that, in the federal system, seriousness of the offense and likelihood of favorable parole outcome are the principal standards by which parole decisions are made. (See 18 U.S.C. 4206). A prisoner's release date is not tied to the outward indicia of his rehabilitative efforts.

(C) CHANGES FROM THE PROPOSAL

The proposal was adopted substantially as set forth in the FEDERAL REGISTER of June 10, 1977, with one exception. The five-year limit on presumptive release dates in the case of sentences of seven years or more was reduced to four years, in order to coincide with the occurrence of the second interim (statu-

tory) review hearing at forty-eight months from the initial hearing. Thus, in a case in which no presumptive release date was set at the initial hearing, the second interim review hearing would be conducted as a four-year reconsideration hearing pursuant to §§ 2.12(c)(2) and 2.14(c).

The amended rules also make clear that the formal rescission procedures of § 2.34 apply to presumptive parole dates, a point not covered in the proposal. This is consistent with the Commission's statement that the intent of the proposal is that release will normally be granted at the presumptive date (42 FR 29934). By the same token, the amended rules also contain a clear statement that once set, a presumptive release date shall not be advanced except under clearly exceptional circumstances.

(D) Summary of the Principal Amendments

Adoption of this proposal required numerous conforming amendments, in addition to the substantive changes. For the convenience of the reader, the Commission's rules (together with changes effected by accompanying documents) are republished in their entirety. A summary of the principal amendments covered by this document follows.

In § 2.1, the term effective date of parole is defined to distinguish that term from the term presumptive parole date. An effective date of parole is a parole date that has been approved following an in-person hearing held within six months of such date, or following a pre-release record review. Thus, a presumptive parole date become an effective date of parole when approved following a pre-release record review, or when approved following an interim hearing which is held within six months of the presumptive parole date. However, the term effective date of parole also includes the familiar grant of parole with a few months delay for the development of a release plan. The term presumptive release date encompasses both presumptive release by parole (a presumptive parole date), as well as presumptive release through the accumulation of good time (mandatory release pursuant to 18 U.S.C. 4163 and 4164).

In § 2.12, the principal features of the proposal (the holding of early initial hearings and the setting of presumptive release dates) are codified. The reader should not fail to note that the setting of presumptive release dates (either by parole or by mandatory release) will be pursuant to the Commission's guidelines at § 2.20 (including decisions above or below the guideline ranges).

In § 2.13, a number of provisions relating to the conduct of the initial hearing as restructured. The only substantive change is the requirement that if a release date is set in excess of six months from the date of the hearing, reasons must be given as in the case of a parole denial.

In § 2.14, the three types of proceedings subsequent to the initial hearing are fully described: Interim hearings pursuant to 18 U.S.C. 4208(h); pre-release reviews; and four-year reconsideration hearings. It is important to note that under no circumstances will a prisoner go without the periodic reviews to which he is entitled by section 4208(h).

In § 2.29, the terms of an effective date of parole are set forth. (The good conduct condition is omitted since it is already contained in § 2.34.)

In § 2.34, the amendment at paragraph (a)(3) permits the Commission to defer consideration of disciplinary infractions until the commencement of the next interim hearing or the pre-release review required by § 21.4(b). Since, as a practical policy, the Commission considers only those disciplinary infractions that have been the subject of formal findings following an Institutional Disciplinary Committee hearing, a delay until the next scheduled review will not operate to the prisoner's disadvantage (through loss of evidence, etc.).

(E) Effective Date

These amended rules will become effective as follows: (1) In the case of prisoners sentenced on September 6, 1977, or thereafter (including prisoners with one or more multiple sentences imposed on September 6, 1977, or thereafter), all provisions of the amended rules shall apply from the initial hearing onward;

(1) In the case of prisoners sentenced prior to September 6, 1977, the amended rules will apply, excepting the provisions of § 2.12(a), at the first regularly scheduled in-person hearing that is held on September 6, 1977, or thereafter. Thus, following the first hearing (initial, review, rescission, or revocation hearing) that is held on September 6, 1977, or thereafter, each prisoner sentenced prior to September 6, 1977, will be notified of a presumptive release date according to the procedures of § 2.12 (c), (d), and (e), and related provisions.

(F) Further Consideration of These Amended Rules

The Commission intends to evaluate the first four months of the operation of these rules at its meeting in January, 1978. Therefore, public comment by interested persons will continue to be welcome and will be considered at that time.

(G) Conclusion

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR Chapter I, Part 2, is amended as set forth below to become effective in the manner described above.

Dated: August 2, 1977.

Curtis C. Crawford,
Acting Chairman,
Parole Commission.

Sec.

Authority: 28 CFR Chapter 1, Part O Subpart I, and (18 U.S.C. 3655, 4164, 4201–4218, 4254–5, and 5005–5041).

§ 2.1 Definitions.

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two other National Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board. The Vice Chairman of the Commission shall be the Chairman of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be Chairman of the National Commissioners.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a pre-release record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

§2.2 Eligibility for parole; adult sentences.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(a) [or pursuant to former 18 U.S.C. 4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(a)(1) [or pursuant to former 18 U.S.C. 4208(a)(1)] may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(2) [or pursuant to former 18 U.S.C. 4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission, except that a Federal prisoner sentenced prior to May 14, 1976, to a maximum term or terms of at least six months but not more than one year is eligible for parole consideration after service of one-third of such term or terms.

§ 2.3 Same; Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may be released on parole in the discretion of the Commission after completion of at least six months in treatment, not including any period of time for "study" prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is required (18 U.S.C. 4254).

§ 2.4 Same; juvenile delinquents.

A committed juvenile delinquent may be released on parole at any time in the discretion of the Commission (18 U.S.C. 5041).

§ 2.5 Same; youth offenders.

A committeed youth offender may be released on parole at any time in the discretion of the Commission (18 U.S.C. 5017(a)).

§ 2.6 Withheld and forfeited good time.

(a) While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, § 4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

(b) Forfeiture of statutory good time not restored shall be deemed, in itself, to indicate that the prisoner has violated the rules of the institution to a serious degree.

§ 2.7 Committed fines.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under the institutional regulations, his inability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding $20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section, nevertheless if the chief executive officer of the institution or U.S. Magistrate shall find that retention of all such assets is reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the chief executive officer of the institution or U.S. Magistrate shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking of the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account of his fine or that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

§ 2.8 Mental competency proceedings.

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

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

tally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiners or designated official(s) determine that a person is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner or parolee has recovered sufficiently to understand the nature of and participate in the proceedings and, in the case of a parolee, may order such parolee transferred to a Bureau of Prison's facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

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

§ 2.9 Study prior to sentencing.

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

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report its findings to the court (18 U.S.C. 5010(e)).

§ 2.10 Date service of sentence commences.

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

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

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on bail pending appeal; (2) is in escape status; (3) has absconded from his or her district of supervision; or (4) comes within the provisions of subsection (b) of this section.

§ 2.11 Application for parole; notice of hearing.

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

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 45 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who fails to submit either an application for parole or a waiver form shall be referred to the Commission's representatives by the chief executive officer of the institution. The prisoner shall then receive an explanation of his right to apply for parole at a later date.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Bureau of Prisons for completion by the prisoner.

(e) At least thirty days prior to the initial hearing (and prior to any hearing conducted pursuant to § 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by § 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution, or as soon thereafter as practicable, in the following cases:

(1) A prisoner with no minimum term of imprisonment; and

(2) A prisoner with a minimum term of imprisonment and a maximum term or terms of less than seven years.

(b) In the case of a prisoner with a minimum term of imprisonment and a maximum term or terms of seven years or more; an initial hearing shall be conducted at least thirty days prior to the completion of the minimum term of imprisonment, or as soon thereafter as practicable.

(c) Following initial hearing: (1) The Commission shall set a presumptive release date (either by parole or by mandatory release), or set an effective date of parole, in the case of every prisoner with a maximum term or terms of less than seven years.

(2) In the case of a prisoner with a maximum term or terms of seven years or more, the Commission shall either set a presumptive release date, if such date falls within four years of the initial hearing, or continue the prisoner to a four-year reconsideration hearing pursuant to § 2.14(c), or set an effective date of parole.

(d) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(e) A presumptive parole date shall be contingent upon a continued record of good conduct and the establishment of a suitable release plan, and shall be subject to the provisions of §§ 2.14 and 2.34. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to § 2.3 of these rules.

§ 2.13 Initial hearing; procedure.

(a) An initial hearing shall be conducted by a panel of two hearing examiners. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and, if such recommendation is for denial, of the reasons therefor. Written notice of the official decision, or the decision to refer under § 2.17 or § 2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. If parole is denied, or a release date is set in excess of six

months from the date of the hearing, the prisoner shall also receive in writing the reasons therefor.

(d) In accordance with 18 U.S.C. 4206, reasons for parole denial may include the following, with further specification as appropriate:

(1) The prisoner has not substantially observed the rules of the institution or institutions in which confined;

(2) Release, in the opinion of the Commission, would depreciate the seriousness of the offense or promote disrespect for the law; or

(3) Release, in the opinion of the Commission, would jeopardize the public welfare.

In lieu of, or in combination with, the above reasons the prisoner shall be furnished with a guidelines evaluation statement containing his offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision to continue such prisoner for a period outside the range indicated by the guidelines.

(e) No interviews with the Commission or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to § 2.55, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.* The purpose of an interim proceeding required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or four-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 2.13 (b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released).

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released).

(2) However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding completion of the minimum term.

(3) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a four-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a four-year reconsideration hearing shall not be advanced except under clearly exceptional circumstances;

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(a).

(b) *Pre-release reviews.* The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, an examiner panel shall review the case on the record, including a current institutional progress report.

(2) Following review and recommendation, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date as provided by § 2.29(c);

(iii) Retard the parole date or commence rescission proceedings as provided by § 2.34.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(c) *Four-year reconsideration hearings.* A four-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures of § 2.13 to determine whether the setting of a presumptive release date would be appropriate at that time.

(1) A four-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a four-year reconsideration hearing, the Commission may:

(i) Set a presumptive release date, if such date falls within four years of the hearing; or

(ii) Continue the prisoner to a further four-year reconsideration hearing if no presumptive release date is set.

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has served the minimum term of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Commissioner for reopening the case under § 2.28 and consideration for parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§ 2.16 Parole of prisoner in state, local, or territorial institution.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommittal for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in state, local or territorial institutions may be provided hearings at such facilities or may be transferred by the Bureau of Prisons to Federal Institutions for hearings by examiner panels of the Commission.

§ 2.17 Original jurisdiction cases.

(a) A Regional Commissioner may designate certain cases for decision by a quorum of Commissioners as described below, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of three votes with the appropriate Regional Commissioner and each National Commissioner having one vote. Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior: (i) Involved an unusual degree of sophistication or planning or (ii) Was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c) (1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such

designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to § 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to § 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

§ 2.18 Granting of parole.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§ 2.19 Information considered.

(a) In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) Reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) Official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) Presentence investigation reports;

(4) Recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney; and

(5) Reports of physical, mental, or psychiatric examination of the offender.

(b) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

§ 2.20 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

Guidelines for decisionmaking

[Customary total time to be served before release (including jail time)]
(in months)

Offense characteristics—severity of offense behavior (examples)	Offender characteristics—parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
Adult				
Low: Escape [open institution or program (e.g., CTC, work release)—absent less than 7 d. Marihuana or soft drugs, simple possession (small quantity for own use). Property offenses (theft or simple possession of stolen property) less than $1,000.	6-10	8-12	10-14	12-18
Low moderate: Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Immigration law violations Income tax evasion (less than $10,000) Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $1,000. Selective Service Act violations	8-12	12-16	16-20	20-28
Moderate: Bribery of a public official (offering or accepting) Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (small scale (e.g., less than 50 lb)). "Soft drugs", possession with intent to distribute/sale (less than $500). Escape [secure program or institution, or absent 7 d or more—no fear or threat used). Firearms Act, possession/purchase/sale (single wapon: not sawed-off shotgun or machine gun). Income tax evasion ($10,000 to $50,000) Mailing threatening communication(s) Misprison of felony Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $1,000 to $10,999. Smuggling/transporting of alien(s) Theft of motor vehicle (not multiple theft or for resale)	12-16	16-20	20-24	24-32
High: Counterfeit currency (passing/possession $20,000 to $100,000). Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale (medium scale (e.g., 50 to 1,000 lb). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000). Explosives, posession/transportation Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Mann Act (no force—commercial purposes) Theft of motor vehicle for resale Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $20,000 to $100,000.	16-20	20-26	26-34	34-44

Offense characteristics—severity of offense behavior (examples)	Offender characteristics—parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
Very high: Robbery (weapon or threat) Breaking and entering (bank or post office-entry or attempted entry to vault). Drugs: Marihuana, possession with intent to distribute/sale (large scale (e.g., 2,000 lb or more)). "Soft drugs", possession with intent to distribute/sale (over $5,000). "Hard drugs", possession with intent to distribute/sale (not exceeding $100,000). Extortion Mann Act (force) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) over $100,000 but not exceeding $500,000. Sexual act (force)	26–36	36–48	48–60	60–72
Greatest: Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury. Aircraft hijacking Drugs: "Hard drugs", possession with intent to distribute/sale (in excess of $100,000). Espionage Explosives (detonation) Kidnaping Willful homicide	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation in severity possible within the category.			

YOUTH/NARA

Low: Escape (open institution or program (e.g., CTC, work release)—absent less than 7 d). Marihuana or soft drugs, simple possession (small quantity for own use). Property offenses (theft or simple possession of stolen property) less than $1,000.	6–10	8–12	10–14	12–18
Low moderate: Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Immigration law violations Income tax evasion (less than $10,000) Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $1,000. Selective Service Act violations	8–12	12–16	16–20	20–26
Moderate: Bribery of a public official (offering or accepting) Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (small scale (e.g., less than 50 lb)). "Soft drugs," possession with intent to distribute/sale (less than $500). Escape (secure program or institution, or absent 7 d or more—no fear or threat used). Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun). Income tax evasion ($10,000 to $50,000) Mailing threatening communication(s) Misprison of felony Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $1,000 to $19,999. Smuggling/transporting of alien(s) Theft of motor vehicle (not multiple theft or for resale)	9–13	13–17	17–21	21–28
High: Counterfeit currency (passing/possession $20,000 to 100,000). Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale (medium scale (e.g., 50 to 1,999 lbs)). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000). Explosives, possession/transportation Firearms Acts, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Mann Act (no force—commercial purposes) Theft of motor vehicle for resale Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $20,000 to $100,000.	12–16	16–20	20–26	26–32
Very high: Robbery (weapon or threat) Breaking and entering (bank or post office-entry or attempted entry to vault). Drugs: Marihuana, possession with intent to distribute/sale (large scale (e.g., 2,000 lbs or more)). "Soft drugs", possession with intent to distribute/sale (over $5,000). "Hard drugs", possession with intent to distribute/sale (not exceeding $100,000). Extortion Mann Act (force) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) over $100,000 but not exceeding $500,000. Sexual act (force)	20–27	27–34	34–41	41–48

Offense characteristics—severity of offense behavior (examples)	Offender characteristics—parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
Greatest: Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury. Aircraft hijacking. Drugs: "Hard drugs", possession with intent to distribute/sale (in excess of $100,000). Espionage. Explosives (detonation). Kidnapping. Willful homicide.	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation in severity possible within the category.			

NOTES.—1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than 1 category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 d (1 mo) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes. "Soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD, and hashish.
7. Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense.

SALIENT FACTOR SCORE

Case name _____ Register No. _____ ☐
Item A _____ ☐
No prior convictions (adult or juvenile)=2.
1 prior conviction=2.
2 or 3 prior convictions=1.
4 or more prior convictions=0.
Item B _____ ☐
No prior incarcerations (adult or juvenile)=2.
1 or 2 prior incarcerations=1.
3 or more prior incarcerations=0.
Item C _____ ☐
Age at first commitment (adult or juvenile):
26 or older=2.
18 to 25=1.
17 or younger=0.
Item D _____ ☐
Commitment offense did not involve auto theft or check(s) (forgery/larceny)=1.
Commitment offense involved auto theft or check(s)=0.
Item E _____ ☐
Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time=1.
Has had parole revoked or been committed for a new offense while on parole, or is a probation violator this time=0.
Item F _____ ☐
No history of heroin or opiate dependence=1.
Otherwise=0.
Item G _____ ☐
Verified employment (or full-time school attendance) for a total of at least 6 mo during the last 2 yr in the community=1.
Otherwise=0.
Total score _____ ☐

§ 2.21 Reparole consideration guidelines.

(a) If revocation is based upon administrative violation(s) only [i.e., violations other than new criminal conduct] the following guidelines shall apply.

	Customary time to be served before rerelease (months)
Positive supervision history (examples):	
a. No serious alcohol/drug abuse and no possession of weapon(s) [and]	
b. At least 8 months from date of release to date of violation behavior [and]	
c. Positive employment/school record during supervision [and]	
d. Present violation represents first instance of failure to comply with parole regulations of this term	0–8
Negative supervision history (examples):	
a. Serious alcohol/drug abuse (e.g. readdiction to hard drugs) or possession of weapon(s) [or]	
b. Less than 8 months from date of release to date of violation behavior [or]	
c. Negative employment/school record during supervision [or]	
d. Negative attitude toward supervision demonstrated by lack of positive efforts to cooperate with parole (aftercare) plan or by repetitious or persistent violations	8–16

(b) (1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or a local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 CFR 2.20 for the poor parole risk category shall then be applied. The original sentence type (i.e. adult, youth), shall determine the applicable guidelines for the parole violator term. Time served on a new state or federal sentence shall be counted as time in custody. This does not affect the computation of the total violator term as provided by §§ 2.47 (b) and (c) and 2.52 (c) and (d).

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature, or violations by a person with a history of assaultive conduct or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Minor offense(s) (e.g., traffic infractions, disorderly conduct) shall normally be treated under administrative violations.

§ 2.22 Communication with the Commission.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate regional office setting forth the nature of the information to be discussed. Such personal interview may be conducted by Staff Personnel in the regional offices. Personal interviews, however, shall not be held by an examiner or member of the Commission except under the Commission's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole.

(b) Hearing examiners shall function as two-man panels except as provided by §§ 2.43 and 2.47 and the concurrence of two examiners shall be required for their recommendation. In the event of a divided recommendation by the panel, the appropriate regional Administrative hearing Examiner shall cast the deciding vote.

(c) In the event the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under paragraph (b) of this section will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision upon review at the Regional Office and docketing, unless action is initiated by the regional Commissioner pursuant to § 2.24.

§ 2.24 Review of panel recommendation by the Regional Commissioners.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emegencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On the motion of the Administrative Hearing Examiner, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel.

§ 2.25 Regional appeal.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of a decision to grant, rescind, deny, or revoke, parole, except that an appeal of a Commission decision pursuant to § 2.17 shall be pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The Regional Commissioner may affirm the decision, order a new institutional hearing on the next docket, order a regional appellate hearing, reverse the decision, or modify a continuance or the effective date of parole. Reversal of a decision or the modification of a decision by more than one hundred eighty days whether based upon the record or following a regional appellate hearing shall require the concurrence of two out of three Regional Commissioners. Decisions requiring a second or additional vote shall be referred to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) Regional appellate hearings may be held at the regional office before the Regional Commissioner. If a regional appellate hearing is ordered, attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Commissioner stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Commissioner shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(d) Within 30 days of receipt of the appeal, except in emergencies, the Regional Commissioner shall inform the applicant in writing of the decision and the reasons therefor.

(e) If no appeal is filed within thirty days of the date of the entry of the original decision, such decision shall stand as the final decision of the Commission.

(f) Appeals under this section may be based on the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

(i) Severity rating;

(ii) Salient factor score;

(iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

§ 2.26 Appeal to National Appeals Board.

(a) Within 30 days of entry of a Regional Commissioner's decision under § 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level.

(b) The National Appeals Board shall act within 60 days of receipt of the appellant's papers, to affirm, modify, or reverse the decision.

(c) Decisions of the National Appeals Board shall be final.

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision on a form provided for this purpose. Attorneys, relatives and other interested parties who wish to submit written information in support of a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 320 First Street, N.W., Washington, D.C. 20537. Appeals of original jurisdiction cases shall be reviewed by the Commission at its next quarterly meeting. A quorum of five Commissioners shall be required and all decisions shall be by majority vote. This appellate decision shall be final.

(b) Attorneys, relatives, or other interested parties who wish to speak for or against parole at such consideration must submit a written request to the Chairman of the Commission stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the decision under § 2.17, that decision shall stand as the final decision of the Commission.

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of §§ 2.25 and 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance and may then take any action authorized under the provisions and procedures of § 2.25. Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 2.17.

§ 2.29 Release on parole.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may, on his own motion, reconsider any case prior to release and may reopen and advance or retard an effective parole date. An effective parole grant may be retarded for up to one hundred and twenty days without a hearing for development and approval of release plans.

(d) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

§ 2.30 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given to or withheld from the Commission. If evidence comes to the attention of the Regional Commissioner that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Commissioner may initiate action pursuant to § 2.34(b) to determine whether such parole should be revoked or rescinded.

§ 2.31 Parole to detainers; statement of policy.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects

meets the criteria set forth in § 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

§ 2.32 Parole to local or immigration detainers.

(a) When a state or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) "Parole to the actual physical custody of the detaining authorities only." In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) "Parole to the actual physical custody of the detaining authorities or an approved plan." In this event, release is to be effected even though the detainer might be withdrawn, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Commission may order one of the following:

(1) "Parole for deportation only." In this event, release is not to be effected unless immigration officials make full arrangements for deportation immediately upon release.

(2) "Parole to the actual physical custody of the immigration authorities only." In this event, release is not to be effected unless immigration officials take the prisoner into custody—regardless of whether or not deportation follows:

(3) "Parole to the actual physical custody of the immigration authorities or an approved plan." In this event, release is to be effected regardless of whether or not immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

§ 2.33 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan.

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

§ 2.34 Rescission of parole.

(a) When an effective date of parole or mandatory parole has been set by the Commission, release on that date shall be conditioned upon continued good conduct by the prisoner. If a prisoner has been granted parole and has subsequently been charged with institutional misconduct sufficient to become a matter of record, the Regional Commissioner shall be advised promptly of such misconduct. The prisoner shall not be released until the institution has been notified that no change has been made in the Commissioner's order to parole.

(1) Upon receipt of information that a prisoner has violated the rules of the institution, the Regional Commissioner may retard the parole grant for up to sixty days without a hearing or may retard the parole grant and schedule the case for a rescission hearing. If the prisoner was confined in a Federal prison at the time of the order retarding parole, the rescission hearing shall be scheduled for the next docket of parole hearings at the institution. If the prisoner was residing in a Federal community treatment center or a state or local halfway house, the rescission hearing shall be scheduled for the first docket of parole hearings after return to a Federal institution. When the prisoner is given written notice of the Commission action retarding parole, he shall be given notice of the charges of misconduct to be considered at the rescission hearing. The purpose of the rescission hearing shall be to determine whether rescission of the parole grant is warranted. At the rescission hearing the prisoner may be represented by a person of his choice and may present documentary evidence.

(2) An institution discipline committee hearing conducted by the institution resulting in a finding that the prisoner has violated the rules of his confinement, may be relied upon by Commission as conclusive evidence of institutional misconduct.

(3) Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by § 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

(4) If the parole grant is rescinded, the prisoner shall be furnished a written statement of the findings of misconduct and the evidence relied upon.

(b) (1) Upon receipt of new information adverse to the prisoner regarding matters other than institutional misconduct, the Regional Commissioner may refer the case to the National Commissioners under the procedures of § 2.17(a) with his recommendation and vote, to retard a previously granted parole. If parole is retarded the case shall be scheduled for a hearing on the next docket of parole hearings or at the first docket of parole hearings following return to a federal institution.

(2) The prisoner shall be given notice of the nature of the new adverse information upon which the rescission consideration is to be based. The hearing shall be conducted in accordance with the procedures set out in §§ 2.12 and 2.13. The purpose of the hearing shall be to determine if the parole grant should be rescinded or if a new parole date should be established.

§ 2.35 Mandatory release in the absence of parole.

A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

§ 2.36 Same; youth offenders.

A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

§ 2.37 Reports to police departments of names of parolees; statement of policy.

Names of parolees under supervision will not be furnished to a police department of a community, except as required by law. All such notifications are to be regarded as confidential.

§ 2.38 Community supervision by United States Probation Officers.

(a) Pursuant to sections 3655 and 4203 (b) (4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Commission's jurisdiction.

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

§ 2.39 Jurisdiction of the Commission.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by § 2.35, § 2.43, or § 2.52.

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

(c) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

(d) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

§ 2.40 Conditions of release.

(a) The conditions of release are printed on the release certificate and are binding regardless of whether the parolee signs the certificate. The following conditions are deemed necessary to provide adequate supervision and to protect the public welfare:

(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 arrival, he shall report to his parole adviser, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole adviser or his probation officer or his office, he shall communicate with the United States Parole Commission, Washington, D.C. 20537.

(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 United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

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

(4) The parolee shall notify his probation 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 probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer at other times as the probation officer directs.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or 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.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised 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 unless he has permission of his probation officer.

(11) The parolee shall not have firearms (or other dangerous weapons) in his possession without the written permission of his probation officer, following prior approval of the United States Parole Commission.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the U.S. Probation Officer supervising the parolee. 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.

(c) The Commission may require a parolee to reside in 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 a parolee, who is an addict, within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by § 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(f) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (e) of this section.

(g) A parolee may appeal an order to impose or modify parole conditions under the procedures of §§ 2.25 and 2.26 as applicable not later than thirty days after the effective date of such conditions.

§ 2.41 Travel by parolees and mandatory releasees.

(a) The probation officer may approve travel outside the district without approval of the Regional Commissioner 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 Regional Commissioner is required for other travel (including travel outside the contiguous forty-eight states, employment more than fifty miles outside the district, and vacations exceeding thirty days). A request for such permission shall be in writing and must demonstrate a substantial need for such travel. In cases falling under the criteria of § 2.17, the concurrence of two out of three Commissioners shall be required to grant such permission.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

§ 2.42 Probation Officer's Reports to Commission.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee or mandatory release after the completion of 12 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

§ 2.43 Early termination of parole.

(a) (1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence. A committed youth offender may be granted an early termination of jurisdiction (unconditional discharge) at any time after one year of continuous supervision on parole.

(2) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the parole to determine the need for continued supervision. In calculating such two-year prior there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(3) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner.

(4) If supervision is not terminated under paragraph (a)(3) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to such termination of supervision not less frequently than biennially.

(5) In calculating the five-year period referred to in paragraph (a)(3) of this section, there shall not be included any period of release on parole prior to the most recent such release or any period served in confinement on any other sentence.

(6) When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) The Regional Commissioner in the region of supervision may release a parolee from supervision pursuant to this section if warranted by the circumstances of the case and reports of the supervising probation officer. Except that, in the case of a parolee previously considered pursuant to § 2.17, the decision to grant termination of supervision must also be pursuant to the provisions of § 2.17.

(c) A parolee may appeal an adverse decision under paragraphs (a) (3) or (4) of this section pursuant to §§ 2.25, 2.26 or § 2.27 as applicable.

§ 2.44 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) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

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

A summons or warrant 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 charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(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 released as if on parole pursuant to 18 U.S.C. 4164, 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 placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section suspends the running of a sentence until such time as the parolee may be retaken into custody and a final determination of the charges may be made by the Commission.

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of 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 for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

§ 2.45 Same, youth offenders.

(a) In addition to the issuance of a summons or warrant pursuant to § 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

§ 2.46 Execution of warrant and service of summons.

(a) Any officer of any Federal correctional institutional or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered shall execute such warrant by taking the prisoner and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing 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 probation 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) 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. Service shall be made by any federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

§ 2.47 Warrant placed as a detainer and dispositional Review.

(a) In those instances where a parolee is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer. Such warrant shall be reviewed by the regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.48(b) to assist him in completing his written application.

(b) Following a dispositional review under this section, the Regional Commissioner may:

(1) Let the detainer stand and order further review at an appropriate time;

(2) Withdraw the detainer and: (i) Order reinstatement of the parolee to supervision upon release from custody, or (ii) Close the case if the expiration date has passed;

(3) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the regional Commissioner at the institution in which the parolee is confined.

Following a revocation hearing, conducted pursuant to this section, the Commission may take any action specified at § 2.52 including the ordering of concurrent or consecutive service of all or part of any violator term imposed. Such revocation hearing shall be conducted under the applicable procedures at § 2.50, and the parolee may be represented by his own or appointed counsel as provided in § 2.48(b).

(c) It shall be the general policy of the Commission that, in the absence of substantial mitigating circumstances the violator term of a parolee convicted of a new offense subsequent to release on parole shall run consecutively to any term imposed for the new offense.

§ 2.48 Revocation by the Commission, preliminary interview.

(a) *Interviewing Officer.* A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner 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 revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he 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 prisoner as required by § 2.46(b), and shall advise the prisoner that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The prisoner shall also be advised that if he cannot afford to retain an attorney he may apply to a United

States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. 3006A. In addition, the prisoner may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the prisoner admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to § 2.49(a) a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the prisoner, apprise the prisoner of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to § 2.50(e).

(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 his recommended decision.

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

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) 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 proceeding may nonetheless be ordered if it is determined that:

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

(2) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) Conviction as probable cause: Conviction of a Federal, State, or Local crime committed subsequent to release on parole or mandatory release shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the regional Commissioner.

(g) Local revocation hearing: A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the regional Commissioner provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.49 Place of revocation hearing.

(a) If the prisoner requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

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

(2) The prisoner denies that he has violated any condition of his release.

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

(c) A prisoner who voluntarily waives his right to a local revocation hearing, or who admits any violation of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A prisoner 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 regional Commissioner under § 2.48(d)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under § 2.44 shall remain on supervision pending the decision of the Commission.

(e) Local revocation hearings 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 prisoner was retaken. However, if a prisoner requests and receives any postponement of his preliminary interview or revocation hearing, or consents to a postponed revocation proceeding initiated by the Commission; or if a prisoner by his actions otherwise precludes the prompt conduct of such proceedings, the above stated time limits may be extended.

§ 2.50 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only, may be conducted by another official designated by the Regional Commissioner. In the case of a revocation hearing conducted by such other official or in the case of a revocation hearing conducted by a single examiner pursuant to § 2.47, a recommendation relative to revocation shall be made by the concurrence of two examiners on the basis of a review of the record. A revocation decision may be appealed under the provisions of § 2.25 and § 2.26, or § 2.27 as applicable.

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

(c) The alleged violator may present witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(d) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at 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.

(f) In lieu of an attorney, an alleged violator may be represented at a 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 with regard to reparole or reinstatement to supervision.

§ 2.51 Issuance of a subpoena for the appearance of witnesses or production of documents.

(a)(1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the regional Commissioner may, upon his own motion or 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) Both such subpoena may also be issued at the discretion of the regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above 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 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 person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in 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. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

§ 2.52 Revocation of parole or mandatory release.

(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 a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand (ii) Modification of the parolee's conditions of release (iii) Referral 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 reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision, except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) If the parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by a term of imprisonment, forfeiture of the time from the date of such release to the date of execution of the warrant shall be ordered, and such time shall not be credited to service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits that trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing (in which the Commission makes an independent finding of violation of conditions of parole), the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d) (1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in § 2.10 (b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

§ 2.53 Mandatory parole.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addiction Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010 (c) of the Youth Corrections Act) serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section such prisoner shall serve until the expiration of his sentence less good time. The forfeiture of statutory good time shall be deemed in itself to indicate that the prisoner has frequently or seriously violated the rules of the institution or institutions in which he has been confined.

(b) When feasible, at least sixty days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to § 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is five years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoners.

§ 2.54 Reviews pursuant to 18 U.S.C. 4203/4215.

(a) The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institution or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

(b) Notwithstanding the provisions of §§ 2.23–2.26 and § 2.28, any decision made by a Regional Commissioner or the National Appeals Board shall, upon the petition of not less than three Commissioners, be referred to the full Commission for review and, by majority vote, affirmed, modified, or reversed. Such petition must be submitted to the Chairman of the Commission and be acted upon by the Commission not later than 30 days from the date of entry of the decision to be reviewed. The prisoner shall receive a written notice of this referral, which shall stay the decision in his case until such review has been completed. Following review by the full Commission, the prisoner shall be informed in writing of the Commission's decision and, if parole is denied, of the reasons therefor.

§ 2.55 Disclosure of Records.

(a) Prior to an initial parole hearing conducted pursuant to § 2.13 or any review hearing thereafter, a prisoner may review reports and other documents in the institution file which will be considered by the Commission at his parole hearing. These documents are generally limited to official reports bearing on the prisoner's offense behavior, personal history, and institutional progress. Review of such reports shall be permitted by the Bureau of Prisons pursuant to its regulations within seven days of a request by the prisoner, except that in the case of reports which must be sent to the originating agency for clearance pursuant to paragraph (c) of this section, a reasonable amount of time shall be permitted to obtain such clearance. Copies of reports and documents may be furnished under applicable Bureau of Prisons regulations.

(b) A report shall not be disclosed to the extent it contains:

(1) Diagnostic opinions which, if known to the prisoner, could lead to a serious disruption of his institutional program;

(2) Material which would reveal sources of information obtained upon a promise of confidentiality; or

(3) Any other information which, if disclosed, might result in harm, physical or otherwise, to any person. The term "otherwise" shall be deemed to include the legitimate privacy interests of such person under the Privacy Act of 1974.

(c) It shall be the duty of the agency which originated any report or document referred to in paragraph (a) of this section to determine whether or not to apply any of the exceptions to disclose set forth in paragraph (b) of this section. If any report or portion thereof is deemed by the originating agency to fall within an exception to disclosure, such agency shall prepare and furnish for inclusion in the institution file a summary of the basic contents of the material to be withheld, bearing in mind the need for confidentiality or impact on the prisoner, or both. In the case of a report prepared by an agency other than the Bureau of Prisons, the Bureau shall refer such report to the originating agency for a determination relative to disclosure, if the report has not been previously cleared or prepared for disclosure.

(d) Upon request by the prisoner, the Commission shall make available a copy of any record which it has retained of a parole or parole revocation hearing pursuant to 18 U.S.C. 4208(f).

(e) Except for deliberative memoranda referred to in paragraph (f) of this section, reports or documents received at regional offices which may be considered by the Commission at any proceeding shall be forwarded for inclusion in the prisoner's institutional file so that he may review them pursuant to paragraph (a) of this section. Such reports will first be referred by the Commission to originating agencies pursuant to paragraph (c) of this section for a determination relative to disclosure if the report has not previously been cleared or prepared for disclosure.

(f) Duplicate copies of records in a prisoner's institutional file as well as deliberative memoranda among Commission Members or staff which do not contain new factual information relative to the parole release determination are retained in Parole Commission regional office files following initial hearing. Records maintained in these files, shall be made available to prisoners, parolees, mandatory releasees, their authorized representative and members of the public upon written request in accordance with applicable law and Department of Justice regulations at 28 CFR Part 16, Subparts C & D. The Commission reserves the right to invoke statutory exemptions to disclosure of its files in appropriate cases under the Freedom of Information Act or Privacy Act text provisions and Alternate Means of Access.

§ 2.56 Special parole terms.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which follows the completion of the regular sentence (including competition of any period on parole or mandatory release).

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Bureau of Prisons.

(c) Should a releasee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he will be returned as a violator of his basic supervision period under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a releasee violate conditions of release during the Special Parole Term, he will be subject to revocation on the Special Parole Term as provided in § 2.52, and subject to reparole or mandatory release under the Special Parole Term.

(d) If the prisoner is reparoled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the inmate is mandatorily released under the revoked "special parole term" a certificate of mandatory release to Special Parole Term will be issued by the Bureau of Prisons.

(e) If the prisoner is terminated from regular parole under § 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

§ 2.57 Prior orders.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

§ 2.58 Absence of hearing examiner.

In the absence of a hearing examiner, a regional commissioner may exercise the authority delegated to hearing examiners in § 2.23.

§ 2.59 Appointment of committees.

The Chairman shall appoint four permanent committees, as follows: (a) Policy, (b) Budget, (c) Personnel and training, (d) Research, and in addition such ad hoc committees as may from time to time be approved by a majority of the Commissioners, to study, review, and recommend to the Commission and Chairman regarding policies and procedures of the Commission. Such Committees shall be appointed from among the Commissioners.

[FR Doc.77-22623 Filed 8-4-77;8:45 am]

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Wayne P. Jackson, Chief
Division of Probation
Administrative Office of U.S. Courts

DATE: August 15, 1977

FROM : George J. Reed, Acting Vice Chairman
U. S. Parole Commission

SUBJECT: Transmittal of new Parole Commission rules

Enclosed are the United States Parole Commission's most recent rules, published August 5, 1977 (corrected August 11, 1977). The rules contain a significant change in the Commission's procedure.

Commencing September 6, 1977, all prisoners sentenced on that date or thereafter to sentences of less than seven years will receive initial hearings within 120 days after arrival at an institution and will at that time be notified of a "presumptive release date", either by parole or by mandatory release. (While prisoners with minimum terms of imprisonment will receive early initial hearings, presumptive parole dates will not be set for a date earlier than the completion of the prisoner's minimum term.)

The purpose of this new policy is to reduce the uncertainty with which most federal prisoners now serve their terms of imprisonment. It will, hopefully, improve morale, keep the prisoner's community ties together, and facilitate release planning. A presumptive release date will, however, be subject to periodic review to determine if the conditions thereof have been met, or if intervening factors (e.g. the effects of aging or illness) warrant a change of decision.

Prisoners with sentences of seven years or more will receive presumptive release dates upon first becoming eligible for parole (i.e., they will not receive early hearings when there is a minimum term to be completed). However, a presumptive release date will not be set for more than four years in advance; where a release date is not set, a full, de novo reconsideration hearing will be held at the end of four years. Prisoners already sentenced will also receive the benefit of the procedure at their next scheduled hearing.

In setting presumptive release dates, the Commission will follow its guidelines for decisionmaking at §2.20 (including decisions above or below the guideline range where the facts warrant such action).

Please ensure distribution to all U. S. District Judges and U. S. Probation Officers.

MAS:mld

Encls.

PRESUMPTIVE RELEASE DATES

The Parole Commission's regulation relative to presumptive release dates which go into effect September 6, 1977, make a number of important changes which are highlighted below:

DEFINITION OF NEW TERMS

1. "Effective Parole Date" means any parole granted within a six month period following the month of a hearing or other consideration.

2. "Presumptive Parole Grant" means any parole granted later than the sixth month following the month of a hearing.

3. "Four Year Reconsideration Hearing" means a continuance of four years from the month of a hearing, and where a presumptive parole grant has not been made.

4. "Continue to Expiration" means a continuance until the prisoner is released by operation of law, either by mandatory release or expiration of sentence.

5. "Statutory Interim Review" means a hearing conducted 18 or 24 months (depending on the length of the sentence) following the month of a hearing at which no effective parole date was established.

6. "Pre-release Record Review" means a review on the record 60 days prior to the month in which a presumptive parole grant has been made.

SCHEDULE OF INITIAL HEARINGS

a. Prisoners sentenced on 9/6/77 or thereafter to maximum terms of less than seven years will receive an initial hearing within 120 days of commitment (regardless of sentence type).

b. Prisoners sentenced before 9/6/77 and all prisoners with sentences of seven years or more regardless of time of sentencing will receive initial hearings as normally scheduled in accordance with previous instructions. That is, they will

be scheduled for hearing upon reaching parole eligibility by law, according to type of sentence imposed.

POSSIBLE ACTIONS BY THE COMMISSION

A. Effective 9/6/77, an examiner hearing panel will no longer recommend continuances for "regular review" or "statutory review" hearings (recommendations for one-third hearings were eliminated as of 8/1/77).

Instead, the panel will recommend one of the following:

a) A parole date within six months from the month of the hearing,

b) Continuance for a presumptive parole date (within 4 years of the month of hearing).

c) Continue to expiration (if the "two-thirds date" is within 4 years of the month of the hearing).

d) A four year reconsideration hearing.

NOTES:

a. The above procedures apply to all hearings, including the dispositional part of revocation and rescission hearings.

b. If the prisoner has a minimum term, a parole date or presumptive parole date cannot be less than the minimum term;

c. Prisoners who have presumptive parole dates, mandatory release dates, or four year reconsideration dates which fall beyond the 18/24 month statutory limit will be scheduled for a "statutory interim hearing" as required by law. The purpose of a statutory interim hearing will be solely to determine whether the previous date set should be retained, retarded (for disciplinary infractions), or advanced (only upon clearly exceptional circumstances).

d. The panel at initial hearing should specify where appropriate:

a) If parole to a detainer; an alternative decision if detainer is lifted (and reasons).

b) Release through CTC (where desired).

c) Special parole conditions (if applicable).

However, special conditions or CTC placement may be added at the pre-release review.

B. All presumptive parole grants (as well as effective parole grants) are contingent upon continual good conduct and the development of a satisfactory release plan. Normally, in the case of a presumptive release date, a pre-release record review will be conducted sixty days prior to date of release to ascertain that the prisoner has lived up to these conditions. If disciplinary infractions have occurred, a rescission hearing on the next docket is to be scheduled. However, if a statutory interim hearing has occurred within six months of the presumptive release date, that hearing shall serve as the pre-release review.

C. All cases scheduled for hearing (whether initial, review, one-third, etc.) on 9/6/77 or thereafter will be treated pursuant to the new procedures.

D. "Reasons" shall be provided in the Notice of Action for every decision to set a presumptive parole date, to set a four year reconsideration hearing, or to continue to expiration.

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to tenants whose employment requires them to work long hours, or who have the sole responsibility for the care and custody of young children. It was therefore suggested that the amendment of § 866.4(g) should contain a clause requiring the PHA to exempt such persons from the mandatory maintenance requirement.

Although some degree of hardship may result to those tenants for whom the demands of family life and employment are stringent, no evidence has come to the attention of the Department which would justify exempting these tenants from the requirement of the amendment. Accordingly, this suggestion has not been adopted.

With respect to the exemption of disabled tenants from the requirement of the amendment, the Department recognizes that injury or hardship could result to such public housing tenants who may be handicapped. Similar considerations exist concerning the ability of the elderly to perform maintenance work. While the Department does not wish to impose any undue burdens on the elderly or disabled, it is our position that not all elderly, disabled, or handicapped tenants are incapable or unwilling to perform maintenance tasks by reason of age or physical impairment. In this connection, the amendment has been revised in response to this comment to provide that the PHA shall exempt those tenants who are unable to perform seasonal maintenance or other maintenance tasks because of age or physical disability.

2. One comment suggested that the amendment should specifically provide that tenants who object to a mandatory maintenance requirement must be informed of their right to contest such requirement pursuant to the regulations for grievance procedures, 24 CFR Part 866, Subpart B. The regulations for grievance procedures provide in 24 CFR, § 866.50 that grievance procedures shall be "established and implemented by * * * (PHAs) to assure that PHA tenants are afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status." Since the above-quoted language entitling tenants to the HUD grievance procedures follows and refers to all the provisions governing PHA leases in Subpart A of Part 866, it was not deemed necessary to include a specific reference to the grievance procedures in the text of the amendment.

3. One comment expressed concern over the substantive meaning of the word "customary" in the amendment. The Department has decided that a further definition of the term would be inappropriate because of the extensive variations among projects related to building type, climate and past PHA practices. It was also suggested that the amendment should be revised to clarify that public housing agencies would be precluded from delegating maintenance tasks to tenants where such tasks were performed by management prior to the adoption of leases in accordance with Part 866. It was not deemed necessary to revise the amendment in response to this comment. The Department wishes to clarify, however, that the amendment is not intended to permit PHAs to shift to tenants under lease provisions adopted in response to this amendment those maintenance tasks which were performed by the PHA prior to the effective date of this amendment.

It was also suggested that the amendment should clarify that it is not intended to benefit those PHAs which have consistently neglected their maintenance responsibilities in contravention of State landlord-tenant laws. HUD wishes to emphasize that the responsibility for maintaining public housing projects in a decent, safe and sanitary condition rests with PHAs. However, where State laws and local custom permit landlords to require that certain tasks be performed by tenants, PHAs are also permitted to do so. The inaction of those PHAs which have been neglectful of their obligations is addressed by the clause of the amendment which states that a maintenance requirement provision in a PHA lease form shall be included "in good faith and not for the purpose of evading the obligations of the PHA," and this clause indicates that such neglect may not be continued by a shifting of responsibility for maintenance to the project tenants.

4. One comment suggested that the amendment removes the power from tenants to consent to perform maintenance responsibilities. It was not the intention of the Department to provide for tenant consent in this provision. The regulations of the Department for Lease and Grievance Procedures provide in section 866.3 that tenants shall have the right to make written comments on the PHA's proposed lease which the PHA is required to consider prior to formal adoption of the new lease by the PHA. PHAs are expected to consider all comments submitted to them pursuant to section 866.3 with care and with due concern for the Congressional admonition in the United States Housing Act requiring sound management practices. Tenants are, of course, free to petition the PHA at any time to request a change in the form of lease used by the PHA.

The same comment suggested that the amendment allows PHAs to unilaterally assign to tenants any maintenance responsibilities the PHA appropriate. The language of the amendment which empowers PHAs to include a required maintenance clause in the lease is limited, as stated in comment 3. above, to the performance of those tasks which are allowed by local custom and in accordance with applicable State law to be performed by tenants of dwelling units of a similar design and construction. Thus, the required performance of maintenance tasks by tenants could not be a unilateral assignment of "any maintenance responsibilities the PHA deem[ed] appropriate."

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW Washington, D.C. 20410.

Accordingly, Title 24, Chapter VIII, Part 866, Subpart A, is amended as set forth below:

Section 866.4(g) is amended to read as follows:

§ 866.4 Lease requirements.

* * * * * *

(g) *Tenant Maintenance.* The lease may provide that tenants shall perform seasonal maintenance tasks or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwelling units of a similar design and construction is customary: *Provided,* That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA: *And provided further,* That the PHA shall exempt those tenants who are unable to perform such tasks because of age or physical disability.

* * * * * *

(Sec. 8, United States Housing Act of 1937 (42 U.S.C. 1408); secs. 5(b), 6(c), United States Housing Act of 1937, as amended (42 U.S.C. 1437c, 1437d); sec. 201(b), Housing and Community Development Act of 1974, 42 U.S.C. 1437 note; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

NOTE: It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with Executive Order No. 11821.

Issued at Washington, D.C., September 21, 1977.

MORTON A. BARUCH,
Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc.77-28933 Filed 9-29-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: The United States Parole Commission.

ACTION: Final rule.

SUMMARY: This rule establishes a new category of offense severity ratings in the Commission's guidelines for parole decisionmaking. The rule sets specific time ranges for a number of offenses in the former "greatest" severity category, thereby narrowing the number of of-

fenses for which the Commisson sets only minimum suggested times to be served. These latter offenses have been treated differently from the other listed offenses because of their relative infrequency and the extreme variations possible in each instance.

EFFECTIVE DATE: November 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stover, Office of the General Counsel, United States Parole Commission, 320 First Street NW., Washington, D.C. 20537, telephone 202-724-3092.

SUPPLEMENTARY INFORMATION: This change in the Commission's offense severity table will affect only those prisoners who receive their initial hearings on or after November 1, 1977.

Prisoners who have been initially heard previously to that date will continue to be treated in accordance with the guideline evaluation rendered at that time. For example, such prisoners will not be required to serve until they have satisfied the minimum number of months set in the new guidelines, if release is otherwise determined to be appropriate.

One comment was received on this proposal, which was addressed to the classification of the drug "cocaine" as a "hard drug". While the comment was not directly related to the primary issues raised by this change, the evidence cited therein for more leniency in the Commission's evaluation of cocaine will be considered along with other information currently being developed on this subject.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR, Chapter I, Part 2, is amended as set forth below to become effective November 1, 1977.

Dated: September 29, 1977.

GEORGE J. REED,
Acting Vice Chairman,
United States Parole Commission.

In the table in § 2.20:

1. In the very high severity category of both Adult and Youth/NARA guidelines, delete "sexual act-force".

2. In both Adult and Youth/NARA guidelines, delete entire "Greatest" severity category and replace with the Greatest I and II categories set forth below.

§ 2.20 Paroling policy guidelines; statement of general policy.

Guidelines for decisionmaking

	Parole prognosis			
	Very good	Good	Fair	Poor
ADULT				
Greatest I: Aggravated felony (e.g., robbery: Weapon fired—no serious injury); explosive detonation (involving potential risk of physical injury to person(s)—no serious injury occurred); robbery (multiple instances (2-3)). Hard drugs (possession with intent to distribute/sale—large scale (e.g., over $100,000)); sexual act—force (e.g., forcible rape).	40 to 55	55 to 70	70 to 85	85 to 110.
Greatest II: Aggravated felony—serious injury (e.g., injury involving substantial risk of death, or protracted disability, or disfigurement); aircraft hijacking; espionage; kidnaping; homicide (intentional or committed during other crime).	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			
YOUTH/NARA				
Same as above, except that the suggested ranges are as follows:				
Greatest I	30 to 40	40 to 50	50 to 60	60 to 78.
Greatest II	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

[FR Doc.77-28980 Filed 9-29-77;8:45 am]

PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: The United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Commission is publishing a rule which would enlarge the definition of "absconding" in an existing rule which denies sentence credit for the time a Youth Corrections Act or Narcotic Addict Rehabilitation Act parolee is in absconder status. The rule is designed to meet the problem of a parolee who evades supervision while remaining within his district, by removing from the existing rule a requirement that the parolee abscond "from his or her district of supervision" before sentence credit could be lost.

EFFECTIVE DATE: November 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Frederick Martin, Office of the General Counsel, United States Parole Commission, 320 First Street NW., Washington, D.C. 20537, telephone 202-724-3092.

SUPPLEMENTARY INFORMATION: A summary of the comment previously received by the Commission regarding this rule may be found in the FEDERAL REGISTER of March 2, 1977 (42 FR 12043). The rule is made effective for all parole revocation hearings conducted by the Commission on or after November 1, 1977.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR chapter 1, Part 2, is amended as set forth below, effective November 1, 1977.

Dated: September 29, 1977.

GEORGE J. REED,
Acting Vice Chairman,
United States Parole Commission.

Section 2.10(c)(3) is revised to read as follows:

§ 2.10 Date service of sentence commences.

* * * * *

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

(3) has absconded from parole supervision; * * *

[FR Doc. 77-28981 Filed 9-29-77;8:45 am]

Title 32A—National Defense Appendix

CHAPTER VI—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

Use of a Priority Rating on Individual Delivery Orders of $2,500 or Less

AGENCY: Domestic and International Business Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Commerce Department amends the provisions of the Defense Priorities and Materials System's regulations and orders to increase to $2,500 from $500 the size of delivery orders which are exempt from the mandatory rating requirement for filling rated orders. Previously, the use of a priority rating was optional on delivery orders under $500. The purpose of these amendments is to reflect the current dollar level accepted by industry in small order procurements. These amendments will result in a reduction in paperwork and expense for business and government operating under the provisions of the Defense Priorities System and the Defense Materials System.

EFFECTIVE DATE: September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Gilbert J. Breer, Mobilization Operations and Plans Division, Office of Industrial Mobilization, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3634).

SUPPLEMENTARY INFORMATION: In connection with the formulation of

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