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September 24, 1975

MEMORANDUM TO UNITED STATES DISTRICT JUDGES
AND ALL UNITED STATES PROBATION OFFICERS

Subject: United States Board of Parole
Statement of General Policy
on Parole Procedures

The attached statement sets forth the current U.S. Board of Parole policy as it relates to parole release procedures.

All probation officers should read this statement and familiarize themselves with the changes in the guidelines and procedures described.

Wayne P. Jackson

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DEPARTMENT
OF JUSTICE
CRIMINAL DIVISION

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federal register

FRIDAY, SEPTEMBER 5, 1975

PART IV:

DEPARTMENT OF JUSTICE

Parole Board

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

Revised Rules

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

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

Parole Board

(A) *Background.* On December 31, 1974, the United States Board of Parole published in the FEDERAL REGISTER at 39 FR 45296 a notice of proposed rulemaking setting forth the rules proposed for publication at Part 2, Title 28, of the Code of Federal Regulations governing parole, release, supervision, and recommitment of prisoners, youth offenders, and juvenile delinquents. A deadline of March 3, 1975, was established for the submission of written statements or comments on the proposed regulations. On March 10, 1975, the deadline was extended to May 4, 1975, (40 FR 10996) and on May 2, 1975, was again extended by 60 days to July 3, 1975, (40 FR 19204). Copies of the proposed rules were placed in Federal institutions throughout the country to facilitate prisoner comment. The full text of the proposed rules may be found at 40 FR 10973 (March 10, 1975).

Prior to December 31, 1974, the Board of Parole published its regulations in the Code of Federal Regulations without providing opportunity for public comment as provided in the Administrative Procedure Act, 5 U.S.C. § 553(b)(3). In so doing, the Board was acting on the assumption that even if it was an agency within the meaning of that statute, its regulations fell, in any event, within the exemptions provided at 5 U.S.C. § 553(b)(3) for interpretative and procedural rules, and statements of general policy.

Subsequent litigation in *Pickus v. United States Board of Parole*, 507 F. 2d 1101 (D.C. Cir. 1974) resulted in a ruling that the Board of Parole was an agency as defined by the Administrative Procedure Act and held that the Board was required to comply with the notice and comment section, 5 U.S.C. § 555(b)(3). The court expressly held that its decision did not touch upon the substantive validity of the Board's regulations.

The Board, therefore, republished its rules on an emergency basis at 39 FR 45223 (December 31, 1974), with notice of proposed rule-making as described above. These rules were later amended at 40 FR 535 (February 5, 1975) and at 40 FR 10973 (March 10, 1975).

Written statements and comments were received from 18 different sources: five from attorneys, seven from individual prisoners, three from committees of prisoners, one from a parolee, one from a Bureau of Prisons employee, and one from a public interest group (The Institute for Public Interest Representation, Georgetown University Law Center). All of these comments were carefully considered by the Board prior to the Board's quarterly meeting held July 30–31, 1975, in Atlanta, Georgia.

(B) *Rule changes.* As finally adopted and set forth below, these regulations contain a number of substantive changes from the March 10, 1975, publication (40 FR 10973). The changes made will be discussed in this section, together with those comments found relevant to the changes. Other comments are evaluated and discussed in the following section.

The changes made are as follows: (a) Section 2.14(b). (*Review Hearings*) was changed to provide that a prisoner sentenced under the Youth Corrections Act, Federal Juvenile Delinquency Act, or under 18 U.S.C. § 4208(a)(2), or 924(a) shall not be continued past one-third of his maximum sentence without a further, in-person hearing upon completion of one-third of his maximum sentence. This practice became effective for prisoners who complete one-third of their maximum sentences after August 1, 1975. Prior to this change, § 2.14(b) provided for a review on the record with a current institutional progress report, rather than an in-person hearing. This rule provoked considerable criticism, and a number of comments urged the change presently adopted. While the Board does not believe that constitutional due process or the statutes concerned require this result (see *Grasso v. Norton*, —— F. 2d ——, No. 74–1222 [2d Cir., decided June 23, 1975]), it was concluded that the better course would be to modify this rule as adopted.

(b) A number of rules were amended to reflect existing practices of the Board and the Bureau of Prisons concerning the prisoner's opportunities to review the information in his official records, and to correct errors of fact appearing therein. The Board has amended its former regulations that emphasized confidentiality as the general rule, in order to conform to applicable laws governing disclosure of federal records. These changes are discussed below:

(1) Section 2.11(d) (*Application for Parole*), has been changed to provide that prisoners shall be furnished with an Inmate Background Statement (Parole Form I–32) for completion prior to the initial hearing. This form permits the prisoner to present his version of the factors which make up his salient factor score. Completion of this form with the assistance of the prisoner's case worker will provide for a more meaningful hearing on the salient factor score, and will serve to point up immediately areas of disagreement on the facts. This rule change reflects present policy and was urged by several comments.

(2) Section 2.13(a) (*Initial Hearing*) has been changed to provide that the examiner panel at an initial hearing shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20(c), his institutional conduct, and, in addition, any other matters the panel may deem relevant. This requirement codifies the present practice and ensures that the prisoner will be afforded the opportunity to respond at the hearing to those assumptions of fact upon which the panel relies in computing the offense severity rating and salient factor score.

(3) Section 2.57 (*Disclosure of Records*), paragraphs (a) through (c) have been changed to provide for access by the prisoner to factual reports.

This rule incorporates a procedure recently implemented by the Bureau of Prisons which provides for disclosure of the central file maintained at the institution in which the prisoner is confined. See Bureau of Prisons Policy Statement No. 2211.8, *Inmate Review of Central Files*, dated June 12, 1975. The central file is the file from which the initial parole hearing and all subsequent review hearings are conducted. At the time of the prisoner's initial classification, his central file is assembled and a duplicate file of the basic documents is prepared for the later use of the Board of Parole. After the initial hearing, the duplicate, or parole file, is sent to the appropriate Board of Parole regional office and is thereafter the repository of all Board of Parole internal memoranda and administrative records concerning the prisoner, as well as updated material duplicated from the central file.

The procedure employed by the Bureau of Prisons is to segregate material exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b), at the time of the initial classification. The prisoner may thereafter make an appointment with his case worker to review the non-exempt documents and obtain copies thereof. Documents withheld may be sought through written request to the Bureau of Prisons, under applicable statutes and regulations governing disclosure of government documents.

The retention of four narrowly drawn exemptions to disclosure in § 2.57(a) was found necessary to protect vital interests, both of the government, and of private persons whose names or identities appear in the prisoner's file. These exemptions parallel those contained in the Freedom of Information Act, 5 U.S.C. § 552(b), and the Federal Rules of Criminal Procedure, Rule 32, dealing with disclosure of the Presentence Investigation Report.

With regard to Presentence Investigation Reports furnished to the Bureau of Prisons and Board of Parole, the Board has been advised by the Administrative Office of the United States Courts that this report does not become a document of the Bureau of Prisons or Board of Parole upon receipt from the U.S. Probation Office, which can be disclosed under applicable statutes governing disclosure of government documents. The sentencing court retains the sole authority to disclose the report. *Cook v. Willingham*, 400 F. 2d 885 (10th Cir. 1968). The regulation at Subparagraph (c), places the responsibility for seeking disclosure of the Presentence Report upon the prisoner, as a matter to be resolved between the prisoner and his sentencing court. However, it should be borne in mind that each prisoner will have been afforded the opportunity to review that report, prior to sentencing, to the extent required by Rule 32, Federal Rules of Criminal Procedure, as amended August 1, 1975.

The above changes will operate in conjunction with a number of related provisions. The principal provision is that

contained in § 2.13, which provides for reasons in the case of parole denial. The reasons given indicate the number of months in custody, the salient factor score, offense severity rating with reasons for the rating if not apparent from the conviction, the guideline range indicated, reasons for going outside the range (where such a decision is made) and any other reason supporting the decision. The salient factor scoresheet, showing each point given or withheld for each of the nine salient factor score items, is furnished to the prisoner as a part of the reasons given.

Prisoners are also afforded a two-level administrative appeal procedure in §§ 2.25 and 2.26. Written statements may be submitted on appeal to the Regional Director under § 2.25, and to the National Appellate Board under § 2.26.

Section 2.57(d) was added to notify prisoners and other persons of their rights to make written requests for disclosure of documents in Board of Parole files, pursuant to the Privacy Act of 1974 and the Freedom of Information Act, by complying with the applicable Department of Justice regulations.

While the Board maintains the position that properly framed reasons for parole denial afford the prisoner a sufficient basis for an effective exercise of his rights to appeal (see *Fisher v. United States*, 382 F. Supp. 241 (D. Conn. 1974)), it recognizes that prisoners often seek to obtain copies of the tape recordings of their parole hearings and the Hearing Examiner's Summary (Parole Form H-1). Copies of tape recordings are furnished to prisoners upon request. The Bureau of Prisons provides recording equipment which enables prisoners to listen to these tapes. Technical difficulties with recording equipment sometimes result in inaudible or garbled recordings. Thus, the Board is not in a position to guarantee an accurate recording of every hearing. Hearing Summaries, which are prepared for the convenience of the examiners and the Board Members participating in the decision-making process, are disclosed subject to exemptions provided by law.

Section 2.12(b) (*Application for Parole*) was changed to delete a provision relating to confidentiality of parole records in order to avoid possible conflict with the disclosure provisions described above. It is nonetheless the Board's policy to avail itself of statutory exemptions to disclosure where appropriate, for example, in order to prevent clearly unwarranted invasions of the personal privacy of prisoners, ex-convicts, and persons communicating with the Board on the assumption of confidentiality.

(c) Section 2.20(c) (*Paroling Policy Guidelines*) has been changed in a number of specific instances.

(1) The severity of Firearms Act violations was felt to be greater than the severity categories (low-moderate and moderate) to which such offenses were formerly assigned. Thus, the possession, purchase, or sale of a single weapon (not a sawed-off shotgun or machine gun) was placed in the moderate severity category of offenses, and the possession, purchase, or sale of a sawed-off shotgun, machine gun, or multiple weapons, was placed in the high severity category of offenses. This change does not preclude decisions below the guideline range indicated when circumstances mitigating the seriousness of the offense are presented to the Board. Sawed-off shotguns were expressly included in this rule change since the possession of such a weapon indicates the unlikelihood of an innocent purpose in the violation. A sawed-off shotgun is generally a weapon purposefully altered to facilitate criminal concealment, and its use presents an unusually grave threat to the personal safety of the victim or innocent bystanders.

(2) In the moderate severity category of offenses, smuggling of aliens was changed to include the smuggling or transporting of aliens, since the Board felt that the individual who transports an alien who has been smuggled into the country, as part of the general scheme to complete the smuggling offense, has committed a crime which cannot, for this purpose, be rationally differentiated from the act of smuggling itself.

(3) It is further concluded the offense of possession of hard drugs with intent to distribute or sell, in order to support a drug habit, should be consolidated with possession/sale for profit in the very high severity category. The Board found that the factor of drug addiction is no more consistent or valid a mitigating circumstance than any other which might be found, and that the serious consequences inherent in this offense could not justify the severity category to which it had previously been assigned. Thus, the Board has determined that offenses involving the possession of hard drugs with intent to distribute or sell warrant a very high severity rating, with the exception of those involving a prior conviction for the same offense, to which the greatest severity rating is presently assigned. However, mitigating or aggravating circumstances may warrant a decision above or below the guideline range indicated.

(4) In relation to the offense of counterfeiting currency, the Board amended the offense behavior description in the high category to read counterfeiting currency, Passing/Possession ($20,000–$100,000) making it consistent with other property related offenses in that category.

(5) One item in the salient factor score was changed. Cocaine or barbituate dependence was found to be a somewhat less reliable predictive factor in general than heroin (opiate) dependence, and was, therefore, deleted from Item F. That item now reads: "no history of heroin or opiate dependence." This does not, however, preclude the Board from considering abuse of the drugs noted or other drugs as a negative indicant on an individual basis.

(6) The definition of Item G, High School Graduate or GED Completed was clarified to refer to such completion prior to the prisoner's present commitment. Completion of a GED during the present commitment (found to be a weaker predictive item) is appropriately considered in relation to institutional program achievement.

(d) Section 2.32 (*Committed Fines*) has been changed to reflect more clearly the operation and effect of the governing statute, 18 U.S.C. § 3569. The regulation as amended places the responsibility for resolving questions involving payment or discharge of prisoners' committed fines upon the chief executive officer of the institution, as provided by statute. One comment called attention to the need for this change.

(e) Section 2.58 (*Special Parole Term*) was revised to provide guidance as to the operation of the special parole term required for certain drug offenses. 21 U.S.C. §§ 8801–966.

(f) Section 2.13(d) (*Initial Hearing*) was changed to provide that notice to the prisoner of the examiner panel's tentative decision shall be mailed within 15 working days, except in emergencies, in order to conform to present practice.

(C) *Evaluation of other comments received.* The comments received by the Board following publication of its proposed rule-making on December 31, 1974, raised a number of difficult issues regarding paroling policy. Many of these issues are valid concerns, even though the specific proposals offered by the writers were not acceptable to the Board at this time. These issues will continue to be given serious attention in the future.

(1) *The paroling policy guidelines.* Nearly every comment received referred to some aspect of the Board's Paroling Policy Guidelines at § 2.20.

Generally, the guidelines were criticized for failing to consider with sufficient emphasis, rehabilitation or institutional progress. However, one comment stated that although prison performance is relevant to the parole decision, the Board's guidelines correctly de-emphasize rehabilitative factors which social science suggests can neither be detected nor measured.

> We support the development of detailed guidelines for decision-making not only because of the Board's stated goals, but also because § 2.20 as applied by the Board serves other commendable purposes. First, by its choice of criteria, the Board has made clear that it has de-emphasized rehabilitative factors as a condition of release. Extensive social science research strongly suggests that rehabilitation can neither be observed, detected or measured. An inmate's institutional behavior and performance should be relevant to the parole decision, however, and we support the Board rule allowing this factor to justify decisions outside the range indicated by the guidelines. Second, to a large degree the guidelines remove inmate uncertainty as to how much time they will have to serve. Because the release criteria in § 2.20 are based almost exclusively upon data fixed at the time of conviction, when he first enters prison, an inmate can calculate with great accuracy the average time he will have to serve . . .
>
> (Statement submitted by the Institute for Public Interest Representation, Georgetown University Law Center, dated May 2, 1975, at Page 3-4).

It should be noted, however, that the Board's guidelines do not totally exclude consideration of institutional, discipline or program achievement. First, the guidelines are predicated upon good institutional performance. Secondly, exceptionally good or poor institutional performance may be considered as a reason for a decision above or below the guidelines.

There were also several specific proposals. One comment urged the Board to set parole dates early in a prisoner's term to remove uncertainty. This proposal is presently being put into practice by one state parole board (California), and the United States Board of Parole will study the results of that policy. In the Federal system, a prisoner continued for an institutional review hearing (when that continuance is not limited by Board policy) will frequently be paroled at that date, absent institutional misconduct.

Several comments suggested that sentence length play some role in the guideline evaluation. While this factor is listed at § 2.19(a)(2), the Board has rejected the proposal that sentence length in itself be included in the guidelines. Such a course would defeat one of the primary benefits of the Board's guidelines, which is to reduce sentence disparity, an important goal endorsed in comments received by the Board. Of course, facts which may have persuaded the sentencing court to impose a shorter or longer than average sentence will be presented to the Board in the Presentence Investigation Report, and may influence the Board to render a decision above or below the guideline range indicated. Moreover, the sentencing courts specific recommendations regarding parole will be considered, in addition to other relevant information, by the Board.

Several comments singled out Item I of the Salient Factor Score as discriminating against unmarried individuals. This item is, however, a strong indicator of parole prognosis. In addition, it should be pointed out that only nine of the 11 possible points on the salient factor score are required in order to achieve the most favorable parole prognosis category.

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.

Another comment urged that the severity ratings be empirically validated (i.e., based on a poll of community opinion), citing *Rossi*, The Seriousness of Crime, 39 Am. Soc. Ref. 224 (April, 1974). While this proposal does not account for Congressional delegation of authority to the Board in 18 U.S.C. § 4203 to consider "the welfare of society," the type of research suggested by the proposal could be useful to the Board, on a long term basis, in the exercise of this authority. Serious consideration will be given to future studies in this field.

Regarding the factual basis for computing the guideline evaluation, one comment suggested that the Board require, by amended regulation at § 2.9 (*Study prior to sentencing*) that the United States Probation Officers include a guideline evaluation in preparation of the Presentence Investigation Report. For the Board's purposes, the factual basis for the guideline evaluation is presently included in these reports. Moreover, as noted above the prisoner provides information regarding his salient factor score in his background statement. The preparation of the determinative guideline evaluation is properly the task of a Board of Parole hearing examiner panel, and must be accomplished at a parole hearing pursuant to § 2.13 of the Board's regulations.

However, the preparation of a prospective guideline evaluation by probation officers could be an aid in the sentencing process if it is used to inform the court of the manner in which the Parole Board will exercise its discretion, rather than as a predetermination of the Board's final evaluation.

The Board notes that United States Probation Officers in the Southern District of New York, and other Probation Officers at the request of individual judges in other districts, currently prepare guideline evaluations for the benefit of the sentencing court.

(2) *Hearing Procedure.* Various aspects of the hearing procedure at § 2.12 were criticized. Two comments were made that the rule on representatives should be expanded to provide for their participation throughout the hearing. This proposal is not acceptable because the parole hearing is not an adversary proceeding, but an evaluative interview. The present regulation provides that the prisoner's representatives may offer a statement at the conclusion of the hearing and respond to questions of the examiner panel during the course of the hearing. There is no restriction in the present rule against the appearance of a lawyer as the prisoner's representative.

Another comment suggested that written notice of the hearing be given 30 days in advance. The Board's regulation at § 2.12(a) provides for written notice prior to a hearing.

However, a rigid 30 day notice requirement would not account for those prisoners transferring into an institution and who are placed on the next hearing docket on short notice. (Hearing examiner panels regularly visit each institution at two month intervals). If a prisoner at initial hearing believes that the notice given is inadequate to allow for preparation for the hearing or for the attendance of his representative, he may request the examiner panel to postpone his hearing until the next docket.

With regard to prisoners serving concurrent state and local sentences in state, local, or territorial institutions, two comments proposed that in-person parole hearings be granted by the Board. The present regulation at § 2.16(b) provides for reviews on the record for such prisoners. These prisoners are heard by the state or territorial parole authorities having jurisdiction over them. Upon a grant of parole from such authority, the Board will review its record to determine whether or not to grant parole at that time if it has not previously granted parole to that prisoner upon a record review. If the Board does not grant parole, the prisoner is returned to a Federal institution, and if he has not previously received an in-person parole hearing from the Board, and is otherwise eligible for parole, he will be scheduled for a hearing on the next docket following his transfer to the institution.

(3) *Appellate procedure.* Comments regarding the Board's appellate procedure generally emphasized the possibility for delays inherent in the absence of a time limit for rendering appeal decisions. While the Board has succeeded in rendering timely appeal decisions in most cases, it will continue to study means of expediting appeals as it evaluates the progress of the regional system which opened in 1974.

One comment pointed out the apparent futility of an appeal under § 2.25 to a Regional Director who has previously referred the examiner panel decision to the National Directors for decision under § 2.24. It was considered necessary to require this appeal since prisoner appeals may contain new or corrected information following receipt of the notice of action (reasons) and the salient factor scoresheet. As a matter of administrative policy, new information should be presented first at the regional level, rather than the national level, to allow the Regional Director full consideration of the case.

(4) *Mental competency hearing procedure.* One comment advanced the position that a § 2.35 mental competency hearing is an adversary proceeding requiring written notice, representation by counsel, and the opportunity to present favorable psychiatric testimony. The competency hearing, however, is an inquiry only into the prisoner's ability to understand the nature of and participate in the parole or parole revocation hearing. Implicit in the regulation is the understanding that the Board of Parole and the Bureau of Prisons will attempt to hold the parole or parole revocation hearing if at all possible, or at the earliest opportunity, in order to achieve a speedy resolution of the merits of the case.

(D) *Conclusion.* Accordingly, pursuant to the authority of 28 CFR Chapter 1, Part 0, Subpart I, and 18 U.S.C. 4201–

4210 and 5005-5037, 28 CFR, Chapter I, Part 2, is amended as set forth below, effective October 6, 1975.

Approved: August 29, 1975.

Dated: August 29, 1975.

MAURICE H. SIGLER,
Chairman,
United States Board of Parole.

Sec.
2.1 Definitions.
2.2 Eligibility for parole, regular adult sentences.
2.3 Same; adult indeterminate sentences.
2.4 Same; juvenile delinquents.
2.5 Same; committed youth offenders.
2.6 Same; sentences under the Narcotic Addict Rehabilitation Act.
2.7 Same; sentences under the gun control statute.
2.8 Same; sentences of six months or less followed by probation.
2.9 Study prior to sentencing.
2.10 Date service of sentence commences.
2.11 Application for parole.
2.12 Hearing procedure.
2.13 Initial hearing.
2.14 Review hearings.
2.15 Petition for consideration of parole prior to date set at hearing.
2.16 Parole of prisoner in state or territorial institution.
2.17 Original jurisdiction cases.
2.18 Granting of parole.
2.19 Consideration by the Board.
2.20 Paroling policy guidelines; statement of general policy.
2.21 Reports considered.
2.22 Communication with the Board.
2.23 Delegation to hearing examiners.
2.24 Review of panel decision by the Regional Director and the National Directors.
2.25 Appeal of hearing panel decision.
2.26 Appeal to National Appellate Board.
2.27 Appeal of original jurisdiction cases.
2.28 Reopening of cases.
2.29 Withheld and forfeited good time.
2.30 Release on parole.
2.31 False or withheld information.
2.32 Committed fines.
2.33 Parole to detainers, statement of policy.
2.34 Parole to local or immigration detainers.
2.35 Mental competency proceedings.
2.36 Release plans.
2.37 Rescission of parole.
2.38 Sponsorship of parolees; statement of policy.
2.39 Mandatory release in the absence of parole.
2.40 Same; youth offenders.
2.41 Reports to police departments of names of parolees; statement of policy.
2.42 Community supervision by United States Probation Officers.
2.43 Duration of period of community supervision.
2.44 Conditions of release.
2.45 Travel by parolees and mandatory releases.
2.46 Supervision reports, modification and discharge from supervision.
2.47 Modification and discharge from supervision; youth offenders.
2.48 Setting aside conviction.
2.49 Revocation of parole or mandatory release.
2.50 Same; youth offenders.
2.51 Unexpired term of imprisonment.
2.52 Execution of warrant; notice of alleged violations.
2.53 Warrant placed as a detainer and dispositional interview.
2.54 Revocation by the Board, preliminary interview.
2.55 Local revocation hearing.
2.56 Revocation hearing procedure.
2.57 Disclosure of Records.
2.58 Special Parole Term.

AUTHORITY: 18 U.S.C. 4201-4218, 5001-5037; 28 CFR Part 0, Subpart V.

§ 2.1 Definitions.

(a) For the purpose of this part, the term "Board" means the United States Board of Parole; and the terms "Youth Correction Division" and "Division" each mean the Youth Correction Division of the Board.

(b) As used in this part, the term "National Appellate Board" means the Chairman, Vice Chairman, and at least one member of the Board, all of whom also serve as National Appellate Board members in the headquarters office, i.e., Washington, D.C.

(c) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms have when those term are 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, regular adult sentences.

Except as set out in the following sections, a federal prisoner wherever confined and serving a definite term or terms of over one hundred and eighty days may, in accordance with the regulations prescribed in this part, be released on parole after serving one-third of such term or terms or after fifteen years of a life sentence or a sentence of over forty-five years (18 U.S.C. 4202).

§ 2.3 Same; adult indeterminate sentences.

A Federal prisoner, other than a juvenile delinquent or a committed youth offender, who has been sentenced to a maximum term of imprisonment in excess of one year may, if the court has designated a minimum term to be served, which term may be less than, but not more than, one-third of the maximum sentence imposed, be released on parole after serving the minimum term. In cases in which a court imposes a maximum sentence of imprisonment upon a prisoner and specifies that the prisoner may become eligible for parole at such times as the Board may determine, the prisoner may be released on parole at any time in the discretion of the Board (18 U.S.C. 4208(a)).

§ 2.4 Same; juvenile delinquents.

The Board of Parole shall release from custody, on such conditions as it deems necessary, each juvenile delinquent who has been committed, as soon as the Board is satisfied that he is likely to remain at liberty without violating the law and when such release would be in the interest of justice (18 U.S.C. 5041).

§ 2.5 Same; committed youth offenders.

The Youth Correction Division may at any time, after reasonable notice to the Director of the Bureau of Prisons, release conditionally under supervision a committed youth offender. A youth offender committed under section 5010(b) of title 18 of the United States Code to a maximum six year term shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction. A youth offender committed under section 5010 (c) of title 18 of the United States Code to a maximum term which is more than six years shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court (18 U.S.C. 5017).

§ 2.6 Same; sentences under the Narcotic Addict Rehabilitation Act.

The Narcotic Addict Rehabilitation Act provides for sentence to a maximum term for treatment as a narcotic addict. Parole may be ordered by the Board after 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 Board, 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 Board whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required (18 U.S.C. 4254).

§ 2.7 Same; sentences under the gun control statute.

A Federal prisoner sentenced under 18 U.S.C. 924(a) for violation of Federal gun control laws is considered eligible for parole at such time as the Board may determine. Prisoners sentenced under this provision are considered for parole in the same manner as if they had been sentenced under 18 U.S.C. 4208(a)(2).

§ 2.8 Same; sentences of six months or less followed by probation.

A Federal prisoner sentenced under 18 U.S.C. 3651 to serve a period of six months or less in a jail type or treatment institution, with a period of probation to follow, is not eligible for parole.

§ 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. 4208(b), 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

Youth Correction Division 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) Service of the sentence of any person who is committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served shall commence to run from the date on which he is received at such jail or other place of detention.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run and continues to run uninterruptedly from the date of conviction, except when such offender is on bail pending appeal or is in escape status.

§ 2.11 Application for parole.

(a) A prisoner, other than a juvenile delinquent, a committed youth offender, or an offender committed under the Narcotic Addict Rehabilitation Act, desiring to apply for parole shall execute such application forms as may be prescribed by the Board. Such forms shall be available at each Federal institution and shall be provided to prisoners eligible for parole. Such prisoners may waive parole consideration on a form provided for that purpose. If such a prisoner waives parole consideration, he may later supply for parole and may be heard during the next visit of the Board to the institution where he is confined, provided he has applied prior to 45 days from the first scheduled date of this visit. A prisoner who receives an initial hearing may not waive any subsequent review hearing scheduled by the Board except as provided in § 2.16(c). New parole applications are not necessary for such review hearings.

(b) A prisoner who is required to apply before receiving a parole hearing but who fails to submit either an application or a waiver form shall be referred to the Board'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.

(c) Prisoners committed under the Federal Juvenile Delinquency Act, The Youth Correction Act, and the Narcotic Addict Rehabilitation Act shall be considered for parole without application and may not waive parole consideration.

(d) Notwithstanding the above provisions 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.

§ 2.12 Hearing procedure.

(a) Prisoners shall be given written notice of the time and place of the hearing described in §§ 2.13 and 2.14. Prisoners may be represented at hearings by a person of their 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.

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

§ 2.13 Initial hearing.

(a) An initial hearing shall be conducted by a panel of two hearing examiners designated by the Board. The examiner panel 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. At the conclusion of the hearing, the examiner panel shall inform the prisoner of its tentative decision, and, if parole is denied, of the reasons therefor.

(b) In accordance with § 2.18 the reasons for parole denial may include, but are not limited to, the following reasons, with further specification where appropriate:

(1) Release at this time would depreciate the seriousness of the offense committed and would thus be incompatible with the welfare of society.

(2) There does not appear to be a reasonable probability at this time that the prisoner would live and remain at liberty without violating the law.

(3) The prisoner has (a serious) (repeated) disciplinary infraction(s) in the institution.

(4) Additional institutional treatment is required to enhance the prisoner's capacity to lead a law-abiding life.

(c) In lieu of or in combination with the reasons in paragraph (b) (1) and (2) of this section the prisoner after initial hearings shall be furnished a guideline evaluation statement which includes the prisoner's salient factor score and offense severity rating as described in § 2.20, as well as the reasons for a decision to continue the prisoner for a period outside the range indicated by the guidelines.

(d) Written notification of the decision or referral under § 2.17 or § 2.24 shall be mailed or transmitted to the prisoner within fifteen working days of the date of the hearing except in emergencies. If parole is denied, the prisoner shall also receive in writing as a part of the decision, the reasons therefor.

§ 2.14 Review hearings.

All hearings subsequent to the initial hearing shall be considered as review hearings. Review hearings by examiners designated by the Board shall be scheduled for each Federal institution, and prisoners shall appear for such hearings in person, except for the following cases:

(a) During the month preceding a regularly scheduled review hearing, a case may be reviewed on the record by an examiner panel (including a current institutional progress report). If the decision is to grant parole, no hearing shall be conducted.

(b) A prisoner sentenced under the Youth Corrections Act or Federal Juvenile Delinquency Act or a prisoner sentenced to a maximum term of more than 18 months under 18 U.S.C. 4208(a)(2) or 924(a) shall not be continued past one-third of his maximum sentence at an initial hearing without further hearing upon completion of one-third of his maximum sentence.

(c) Notification of review decisions shall be given as set forth in § 2.13(d). No prisoner shall be continued for more than three years from the time of last hearing without further review.

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

When a prisoner has met the minimum time of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Director for reopening the case under § 2.28 and consideration of parole prior to the date set by the Board 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 or territorial institution.

(a) Any person who has been convicted of any offense against the United States which is punishable by imprisonment but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Board 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 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, the parole decision shall be made by an examiner panel of the appropriate region on the record only.

(c) Prisoners who are serving federal sentences exclusively but who are being boarded in state, local or territorial institutions may be considered for parole on the record only, provided they sign a waiver of their right to a personal hearing. If such a prisoner does not waive a personal hearing, he may be transferred by the Bureau of Prisons to a Federal institution where he will be considered for

parole at the next visit by an examiner panel of the Board.

§ 2.17 Original jurisdiction cases.

(a) A Regional Director may designate certain cases as original jurisdiction cases. The Regional Director shall then forward the case with his vote, and any additional comments he may deem germane, to the National Directors for decision. Decisions shall be based upon the concurrence of three votes with the appropriate Regional Director and each National Director having one vote. Additional votes, if required, shall be cast by the other Regional Directors on a rotating basis as established by the Chairman of the Board.

(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 (A) involved an unusual degree of sophistication or planning or (B) 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.

§ 2.18 Granting of parole.

The granting of parole rests in the discretion of the Board of Parole. The Board may parole a prisoner who is otherwise eligible if (a) in the opinion of the Board such release is not incompatible with the welfare of society; (b) he has observed substantially the rules of the institution in which he is confined; and (c) there is a reasonable probability that he will live and remain at liberty without violating the laws (18 U.S.C. 4203(a)).

§ 2.19 Consideration by the Board.

In the exercise of its discretion, the Board generally considers some or all of the following factors and such others as it may deem appropriate:

(a) Sentence data:

(1) Type of sentence;

(2) Length of sentence;

(3) Recommendations of judge, U.S. Attorney, and other responsible officials.

(b) Present offense:

(1) Facts and circumstances of the offense;

(2) Mitigating and aggravating factors;

(3) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any.

(c) Prior criminal record:

(1) Nature and pattern of offenses;

(2) Adjustment to previous probation, parole, and confinement;

(3) Detainers.

(d) Changes in motivation and behavior:

(1) Changes in attitude toward self and others;

(2) Reasons underlying changes;

(3) Personal goals and description of personal strength or resources available to maintain motivation for law abiding behavior.

(e) Personal and social history:

(1) Family and marital history;

(2) Intelligence and education;

(3) Employment and military experience;

(4) Physical and emotional health.

(f) Institutional experience:

(1) Program goals and accomplishments:

(i) Academic;

(ii) Vocational education, training or work assignments;

(iii) Therapy.

(2) General adjustment:

(i) Inter-personal relationships with staff and inmates;

(ii) Behavior, including misconduct.

(g) Community resources, including release plans:

(1) Residence; live alone, with family or others;

(2) Employment, training, or academic education;

(3) Special needs and resources to meet them.

(h) Results of scientific data and tools;

(1) Psychological tests and evaluations;

(2) Statistical parole experience tables (salient factor score).

(i) Paroling policy guidelines as set forth in § 2.20;

(j) Comments by hearing examiners, evaluative comments supporting a decision, including impressions gained from the hearing.

§ 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 Board of Parole has adopted guidelines for parole release consideration.

(b) These guideline 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 the 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. For example, cases with exceptionally good institutional program achievement may be considered for earlier release.

(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) These guidelines do not apply to parole revocation or reparole considerations. The Board shall review the guidelines periodically and may revise or modify them at any time as deemed appropriate.

ADULT

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

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				
Immigration law violations Minor theft (includes larceny and simple possession of stolen property less than $1,000). Walkaway	6 to 10 mo.	8 to 12 mo.	10 to 14 mo.	12 to 16 mo.
LOW MODERATE				
Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Drugs marihuana, simple possession (less than $500). Forgery/fraud (less than $1,000) Income tax evasion (less than $10,000) Selective Service Act violations Theft from mail (less than $1,000)	8 to 12 mo.	12 to 16 mo.	16 to 20 mo.	20 to 25 mo
MODERATE				
Bribery of public officials Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (less than $5,000). "Soft drugs", possession with intent to distribute/sale (less than to $5,00) Embezzlement (less than $20,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (single weapon—not sawed-off shotgun or machine gun). Income tax evasion ($10,000 to $50,000) Interstate transportation of stolen/forged securities (less than $20,000). Mailing threatening communications Misprision of felony Receiving stolen property with intent to resell (less than $20,000). Smuggling/Transporting of Aliens Theft/forgery/fraud ($1,000 to $19,999) Theft of motor vehicle (not multiple theft or for resale).	12 to 16 mo.	16 to 20 mo.	20 to 24 mo.	24 to 30 mo.
HIGH				
Burglary or larceny (other than embezzlement) from bank or post office. Counterfeit currency (passing/possession $20,000-$100,000). Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale ($5,000 or more). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000) Embezzlement ($20,000 to $100,000) Firearms Act, possession/purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Interstate transportation of stolen/forged securities ($20,000 to $100,000). Mann Act (no force—commercial purposes) Organized vehicle theft Receiving stolen property ($20,000 to $100,000) Theft/forgery/fraud ($20,000 to $100,000)	16 to 20 mo.	20 to 26 mo.	26 to 32 mo.	32 to 38 mo.
VERY HIGH				
Robbery (weapon or threat) Drugs: "Hard drugs" (possession with intent to distribute sale) [no prior conviction for sale of "hard drugs"]. "Soft drugs", possession with intent to distribute/sale (over $5,000) Extortion Mann Act (force) Sexual act (force)	26 to 36 mo.	36 to 45 mo.	45 to 55 mo.	55 to 65 mo.
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) for profit [prior conviction(s) for sale of "hard drugs"]. 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 variations 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 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 d (1 mo) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes

YOUTH

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

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				
Immigration law violations Minor theft (includes larceny and simple possession of stolen property less than $1,000). Walkaway	6 to 10 mo.	8 to 12 mo.	10 to 14 mo.	12 to 16 mo.
LOW MODERATE				
Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Drugs: marihuana, simple possession (less than $500). Forgery/fraud (less than $1,000) Income tax evasion (less than $10,000) Selective Service Act violations Theft from mail (less than $1,000)	8 to 12 mo.	12 to 16 mo.	16 to 20 mo.	20 to 25 mo.
MODERATE				
Bribery of public officials Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (less than $5,000). "Soft drugs", possession with intent to distribute/sale (less than to $500) Embezzlement (less than $20,000) Explosives, possession/transportation Firearms Act, possession purchase sale (single weapon—not sawed-off shotgun or machine gun). Income tax evasion ($10,000 to $50,000) Interstate transportation of stolen/forged securities (less than $20,000). Mailing threatening communications Misprision of felony Receiving stolen property with intent to resell (less than $20,000). Smuggling Transporting of Aliens Theft/forgery/fraud ($1,000 to $19,999) Theft of motor vehicle (not multiple theft or for resale).	9 to 13 mo.	13 to 17 mo.	17 to 21 mo.	21 to 26 mo.
HIGH				
Burglary or larceny (other than embezzlement) from bank or post office. Counterfeit currency (passing possession $20,000-$100,000). Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale ($5,000 or more). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000) Embezzlement ($20,000 to $100,000) Firearms Act, possession purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Interstate transportation of stolen/forged securities ($20,000 to $100,000). Mann Act (no force—commercial purposes) Organized vehicle theft Receiving stolen property ($20,000 to $100,000) Theft/forgery/fraud ($20,000 to $100,000)	12 to 16 mo.	16 to 20 mo.	20 to 24 mo.	24 to 28 mo.
VERY HIGH				
Robbery (weapon or threat) Drugs: "Hard drugs" (possession with intent to distribute sale) (no prior conviction for sale of "hard drugs"). "Soft drugs", possession with intent to distribute/sale (over $5,000) Extortion Mann Act (force) Sexual act (force)	20 to 27 mo.	27 to 32 mo.	32 to 36 mo.	36 to 42 mo.
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) for profit (prior conviction(s) for sale of "hard drugs"). 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 variations 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 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 d (1 mo) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

NARA

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

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				
Immigration law violations Minor theft (includes larceny and simple possession of stolen property less than $1,000). Walkaway	6 to 12 mos.		12 to 18 mos.	
LOW MODERATE				
Alcohol law violations Counterfeit currency (passing/possession less than $1,000). Drugs: Marihuana, simple possession (less than $500). Forgery/fraud (less than $1,000) Income tax evasion (less than $10,000) Selective Service Act violations Theft from mail (less than $1,000)	6 to 12 mos.		12 to 18 mos.	
MODERATE				
Bribery of public officials Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (less than $5,000). "Soft drugs", possession with intent to distribute/sale (less than $500) Embezzlement (less than $20,000) Explosives, possession/transportation Firearms Act, possession purchase sale (single weapon—not sawed-off shotgun or machine gun). Income tax evasion ($10,000 to $50,000) Interstate transportation of stolen/forged securities (less than $20,000). Mailing threatening communications Misprision of felony Receiving stolen property with intent to resell (less than $20,000). Smuggling Transporting of Aliens Theft/forgery/fraud ($1,000 to $19,999) Theft of motor vehicle (not multiple theft or for resale).	12 to 18 mos.		18 to 24 mos.	
HIGH				
Burglary or larceny (other than embezzlement) from bank or post office. Counterfeit currency (passing possession $20,000–$100,000). Counterfeiting (manufacturing) Drugs: Marihuana, possession with intent to distribute/sale ($5,000 or more). "Soft drugs", possession with intent to distribute/sale ($500 to $5,000) Embezzlement ($20,000 to $100,000) Firearms Act, possession purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Interstate transportation of stolen/forged securities ($20,000 to $100,000). Mann Act (no force—commercial purposes) Organized vehicle theft Receiving stolen property ($20,000 to $100,000) Theft/forgery/fraud ($20,000 to $100,000)	12 to 18 mos.		18 to 24 mos.	
VERY HIGH				
Robbery (weapon or threat) Drugs: "Hard drugs" (possession with intent to distribute/sale) (no prior conviction for sale of "hard drugs"). "Soft drugs", possession with intent to distribute/sale (over $5,000) Extortion Mann Act (force) Sexual act (force)	20 to 26 mos.		26 to 32 mos.	
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) for profit (prior conviction(s) for sale of "hard drugs"). 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 variations 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 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 60 d (1 mo.) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

SALIENT FACTOR SCORE

Case name_____ Register No_____

Item A_____ ☐
No prior convictions (adult or juvenile) =2
One or two prior convictions=1
Three or more prior convictions=0

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

Item C_____ ☐
Age at first commitment (adult or juvenile) 18 years or older=1
Otherwise=0

Item D_____ ☐
Commitment offense did not involve auto theft=1
Otherwise=0

Item E_____ ☐
Never had parole revoked or been committed for a new offense while on parole=1
Otherwise=0

Item F_____ ☐
No history of heroin or opiate dependence=1
Otherwise=0

Item G_____ ☐
Has completed 12th grade or received GED (prior to this commitment) =1
Otherwise=0

Item H_____ ☐
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

Item I_____ ☐
Release plan to live with spouse and/or children=1
Otherwise=0

Total score_____ ☐

§ 2.21 Reports considered.

Decisions as to whether a parole shall be granted or denied shall be determined on the basis of the application, if any, submitted by the prisoner, together with the classification study and all reports assembled by all the services which shall have been active in the development of the case. These reports may include the reports by the prosecution officers, reports by or for the sentencing court, records from the Federal Bureau of Investigation, reports from the officials in each institution in which the applicant shall have been confined, all records of social agency contacts, and all correspondence and such other records as are necessary or appropriate for complete presentation of the case. Before making a decision as to whether a parole should be granted or denied in any particular case, the Board will consider all available relevant and pertinent information concerning the case. The Board encourages the submission of such information by interested persons.

§ 2.22 Communication with the Board.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Board of Parole must submit a written request to the appropriate regional office setting for 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 Board, except under the Board's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority to make tentative decisions relative to the granting or denial of parole, or reparole and revocation or reinstatement of parole or mandatory release and to fix conditions of parole.

(b) Hearing examiners shall function as two-man panels and the concurrence of both examiners shall be required for their decision. In the event of a split decision by the panel, the appropriate regional Administrative Hearing Examiner shall cast the deciding vote.

(c) When a hearing examiner panel proposes to make a decision which falls outside of explicit guidelines for parole decision-making promulgated by the Board, the case shall be reviewed by the appropriate regional Administrative Hearing Examiner. When an Administrative Hearing Examiner does not concur in a decision of an examiner panel to set a parole effective date or continuance outside the Board's guidelines he may with the concurrence of the Regional Director modify the date to the nearest limit of the guidelines.

(d) 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 paragraphs (b) and (c) of this section will be referred to another hearing examiner.

(e) A tentative decision of a hearing examiner panel, subject to the provisions of § 2.23(c), shall become effective upon review and docketing at the Regional Office unless action is initiated by the Regional Director under § 2.24.

§ 2.24 Review of panel decision by the Regional Director and the National Directors.

A Regional Director may review the decision of any examiner panel and refer this decision, prior to written notification to the prisoner, with his recommendation and vote to the National Directors for reconsideration and any action deemed appropriate. Written notice of this reconsideration action shall be mailed or transmitted to the prisoner within fifteen working days of the dat of the hearing. The Regional Director and each National Director shall have one vote and decisions shall be based upon the concurrence of two votes.

§ 2.25 Appeal of hearing panel decision.

(a) A prisoner may file with the responsible Regional Director a written appeal of a decision of a hearing examiner panel or a decision under § 2.24 to grant, deny or revoke parole or to revoke mandatory release. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision. The appeal shall be considered by the Regional Director who may affirm the decision, order a new institutional hearing, 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 such 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 Directors. Appellate decisions requiring a second or additional vote shall be referred to other Regional Directors on a rotating basis as established by the Chairman.

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

(c) If no appeal is filed within thirty days of entry of the original decision, this decision shall stand as the final decision of the Board.

(d) Appeals under this section may be based only upon the following grounds:

(1) The reasons given for a denial or continuance do not support the decision; or

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

§ 2.26 Appeal to National Appellate Board.

(a) A prisoner may file a written appeal of the Regional Director's decision under § 2.25 to the National Appellate Board on a form provided for that purpose within thirty days after the entry

of the Regional Director's written decision. The National Appellate 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 bases for such appeal shall be the same as for a regional appeal as set forth in § 2.25(d). However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appellate Board.

(c) Decisions of the National Appellate 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 Appellate Board Executive, United States Board of Parole, 320 First Street NW., Washington, D.C. 20537. Appeals of original jurisdiction cases shall be reviewed by the entire Board at its next quarterly meeting. A quorum of five members shall be required and all decisions shall be by majority vote. The Chairman shall vote on the decision only in the absence of a member. 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 Board 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, this decision shall stand as the final decision of the Board.

(d) The bases for this appeal shall be the same as for a regional appeal as set forth in § 2.25(d).

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Director 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 Director under the procedures of § 2.17.

§ 2.29 Withheld and forfeited good time.

(a) Section 4202 of title 18 of the United States Code permits Federal prisoners to be paroled if they have observed the rules of the institution in which they are confined and if they are otherwise eligible for parole. Any forfeiture of statutory good time shall be deemed to indicate that the prisoner has violated the rules of the institution to a serious degree, and a parole will not be granted in any such case in which such a forfeiture remains effective against the prisoner concerned. Any withholding of statutory good time shall be deemed to indicate that the prisoner has engaged in some less serious breach of the rules of the institution. Nevertheless, parole will not usually be granted unless and until such good time has been restored.

(b) Neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from applying for and receiving a parole hearing.

(c) The above restrictions shall not apply, however, to the forfeiture or withholding of *extra good time* which is granted because of meritorious behavior. Parole may be ordered without regard to a prisoner's status insofar as *extra good time* is concerned, although the reasons for any forfeiture or withholding will be included among the other factors used in making the parole decision.

§ 2.30 Release on parole.

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

(b) Parole release dates generally will not be set more than six months from the date of the parole hearing. Exceptions may be made in extraordinary situations or when necessary to permit an adequate period of residence in a Community Treatment Center. Such residence in a Community Treatment Center shall not generally exceed one hundred and twenty days. An effective date of parole shall not be set for a Saturday, Sunday, or a legal holiday.

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

§ 2.31 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Board. If evidence comes to the attention of the Board that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Director may schedule a hearing to determine whether parole should be revoked or rescinded. Such a hearing shall be conducted in accordance with the procedure set out in § 2.37 (b)(2).

§ 2.32 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 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 of 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 in titution 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 on his fine of 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 sentence does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

§ 2.33 Parole to detainers; statement of policy.

The policy of the Board with regard to parole to detainers is in general accord with the principles recommended by the Association of Administrators of the Interstate Compact for the Supervision of Parolees and Probationers:

(a) The status of detainers held against prisoners in Federal institutions will be investigated, so far as is reasonably possible, prior to parole hearings.

(b) In appropriate cases summary information regarding such prisoner will be provided to state or local authorities. The Board urges institution officials to provide such information.

(c) Where the detainer is not lifted, the Board may grant parole to such detainer if a prisoner is considered in other respects to be a good parole risk. Ordinarily, however, the Board will grant parole to such detainer only if the status of that detainer has been investigated.

(d) The Board 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.

(e) The presence of a detainer is not of itself a valid reason for the denial of parole. It is recognized that where the prisoner appears to be a good parole risk, there may be distinct advantage in granting parole despite a detainer.

§ 2.34 Parole to local or immigration detainers.

(a) When a state or local detainer is outstanding against a prisoner whom the Board wishes to parole, the Board 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 Board 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 Board wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Board 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. 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 from the Board.

§ 2.35 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 Board of Parole.

(b) At the competency hearing, the hearing examiners or designated official(s) shall receive oral or written psychiatric 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 observations 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 mentally 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 Director for review. If the Regional Director 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 committed to a Bureau of Prison's facility for further examination. In any such case, the Regional Director shall require a progress report at least every six months on the mental health of the prisoner. When the Regional Director determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest possible date.

(d) If the Regional Director 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.

§ 2.36 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Director. In general, the following factors should be present before a prisoner is released after parole has been granted:

(1) The probation officer to whom the releasee is assigned may, in his discretion, require that there be available to the releasee an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside. The adviser should act as a source of advice for the releasee relative to community adjustment. The adviser may provide special services such as vocational placement, personal counsel, or referral to community agencies. The adviser is expected to report to the probation officer any law violation or serious misconduct on the part of the releasee. The adviser may be required by the probation officer to countersign the parolee's monthly supervision report to indicate actual contact with the parolee.

(2) There should be satisfactory evidence that the prospective parolee will be legitimately employed following his release; and

(3) There should be satisfactory assurance that necessary aftercare will be available to a parolee who is ill or who has some other problem which requires special care.

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

§ 2.37 Rescission of parole.

(a) When an effective date of parole has been set by the Board, 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 Director 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 Board's order to parole.

(1) Upon receipt of information that a prisoner has violated the rules of the institution, the Regional Director 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 Board action regarding 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 the Board as conclusive evidence of institutional misconduct.

(3) 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 Board acting upon the procedures of § 2.17 may retard a previously granted parole and schedule the case for an institutional review 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 con-

sideration 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.

§ 2.38 Sponsorship of parolees; statement of policy.

It is the policy of the Youth Corrections Division to cooperate with groups desiring to serve as sponsors of parolees. In all cases, sponsors shall serve under the direction of and in cooperation with the probation officers to whom the parolees are assigned.

§ 2.39 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 and extra good time deductions as he may have earned through his behavior and efforts at the institution of confinement. He shall be released as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less one hundred eighty days. Insofar as possible, release plans shall be completed before the release of any such prisoner.

§ 2.40 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.

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

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

§ 2.42 Community supervision by United States Probation Officers.

(a) Pursuant to section 3655 of title 18 of the United States Code, United States Probation Officers are required to provide such parole services as the Attorney General may request. The Attorney General has delegated his authority in this regard to the Board (28 CFR 0.126(b)). In conformity with the foregoing, probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Board'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 Board.

§ 2.43 Duration of period of community supervision.

(a) Any prisoner, with the exception of those sentenced prior to June 29, 1932, who is released under the provisions of laws relating to parole, shall continue until the expiration of the maximum term or terms specified in his sentence without deductions of allowance for good time. Prisoners sentenced prior to June 29, 1932, shall receive reductions in their maximum term or terms of imprisonment for such good time allowances as may be authorized by law.

(b) The Regional Director may discharge from supervision prior to the normal expiration date as provided in § 2.46(b), but the sentence is not thus commuted and such a parolee may be reinstated to supervision or retaken on the basis of a violator warrant.

§ 2.44 Conditions of release.

The conditions of release are printed on the release certificate and are binding regardless of whether the releasee signs the certificate. The Board, or a member thereof, may add special conditions or modify the conditions of release at any time.

§ 2.45 Travel by parolees and mandatory releasees.

(a) The probation officer may approve travel outside the district without approval of the Regional Director 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 purposes of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Director is required for other travel, including travel outside the continental limits of the United States, employment more than fifty miles outside the district, and vacations exceeding thirty days. A special condition imposed by the Regional Director prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

§ 2.46 Supervision reports, modification and discharge from supervision.

(a) All parolees and mandatory releases shall make such reports to the United States Probation Officers to whom they have been assigned as may be required by the Board or Probation Officers. Probation Officers shall submit summary reviews of the progress of parolees and mandatory releasees according to Board policy. On the basis of summary reviews of the progress of parolees, the Regional Director may modify the reporting requirement of parolees or releasees.

(b) After the parolee or mandatory releasee has been under supervision for at least one year, the Regional Director may, in his discretion, permit the parolee to submit a written report to his probation officer on a less frequent basis than once a month. After a period of such reduced reporting the Regional Director may further order that the parolee be discharged from all supervision by the Probation Officer. In the latter instances, a parolee may be reinstated to supervision or a warrant may be issued for him as a violator at any time prior to the expiration of the sentence or sentences imposed by the court. Other modification in the reporting requirements may be made by the Regional Director at any time during the parolee's term.

§ 2.47 Modification and discharge from supervision; youth offenders.

A committed youth offender may remain under supervision until the expiration of his sentence or he may be released from supervision or unconditionally discharged at any time after one year of continuous supervision on parole.

§ 2.48 Setting aside conviction.

When an unconditional discharge has been granted to a youth offender prior to the expiration of his maximum term of sentence, his conviction shall be automatically set aside and the Regional Director shall issue to the youth offender a certificate to that effect.

§ 2.49 Revocation of parole or mandatory release.

(a) If a parolee or mandatory releasee violates any of the conditions of his release, and satisfactory evidence thereof is presented to the Board, or a member thereof, a warrant may be issued and the offender returned to an institution. Warrants shall be issued or withdrawn only by the Board, or a member thereof.

(b) A warrant for the apprehension of any parolee shall be issued only within the maximum term or terms for which the prisoner was sentenced.

(c) A warrant for the apprehension of any mandatory releasee shall be issued only within the maximum term or terms for which the prisoner was sentenced, less one hundred eighty days.

§ 2.50 Same, youth offenders.

In addition to issuance of a warrant on the basis of violation of any of the condition of release, the responsible Regional Director may, when he is of the opinion that such youth offender would benefit by further treatment direct his return to custody or issue a warrant for his apprehension and return to custody. Upon his return to custody, such youth offender shall be given a revocation hearing under the same provisions as adult offenders as specified in § 2.54 to § 2.56. Following the revocation hearing parole may be reinstated, revoked or the terms and conditions thereof may be modified.

§ 2.51 Unexpired term of imprisonment.

The time a prisoner was on parole or mandatory release is not credited to the service of his sentence if revocation occurs. When a warrant is issued the sentence ceases to run, but begins to run again when the releasee is taken into Federal custody by the execution of the Board's violation warrant. However, the sentences of prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act run uninterruptedly from the date of conviction without regard to any revocation, except as provided in § 2.10(c). In no case may the commitment of a person under the Federal Juvenile Delinquency Act extend past his twenty-first birthday.

§ 2.52 Execution of warrant; notice of alleged violations.

(a) Any officer of any Federal correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant shall be delivered shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General. The warrant shall be considered delivered to a Federal officer when the warrant is signed and placed in the mail at the Board headquarters or regional office before the expiration of the maximum term of sentence.

(b) On arrest of the prisoner the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the alleged violations of parole or mandatory release upon which the warrant was issued.

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

§ 2.53 Warrant placed as a detainer and dispositional interview.

(a) In those instances where the prisoner is serving a new sentence in an institution, the warrant may be placed there as a detainer. Such prisoner shall be advised that he may communicate with the Board relative to disposition of the warrant, and may request that it be withdrawn or executed so his violator term will run concurrently with the new sentence. Should further information be deemed necessary, the Regional Director may designate a hearing examiner panel to conduct a dispositional interview at the institution where the prisoner is confined. At such dispositional interview the prisoner may be represented by counsel of his own choice and may call witnesses in his own behalf, provided he bears their expenses. He shall be given timely notice of the dispositional interview and its procedure.

(b) Following the dispositional review the Regional Director may:

(1) Let the detainer stand

(2) Withdraw the detainer and close the case if the expiration date has passed;

(3) Withdraw the detainer and reinstate to supervision; thus permitting the federal sentence time to run uninterruptedly from the time of his original release on parole or mandatory release.

(4) Execute warrant, thus permitting the sentence to run from that point in time. If the warrant is executed, a previously conducted dispositional interview may be construed as a revocation hearing.

(c) In all cases, including those where a dispositional interview is not conducted, the Board shall conduct annual reviews relative to the disposition of the warrant. These decisions will be made by the Regional Director. The Board shall request periodic reports from institution officials for its consideration.

§ 2.54 Revocation by the Board, preliminary interview.

(a) A prisoner who is retaken on a warrant issued by a Board Member shall be given a preliminary interview by an official designated by the Regional Director to determine if there is probable cause to hold the prisoner for a revocation hearing and, if so, whether such revocation hearing should be conducted in the locality of the charged violation(s) or in a Federal institution. 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) At the beginning of the preliminary interview, the hearing officer shall explain the Board's revocation procedure to the prisoner and shall advise the prisoner that he may have the preliminary interview postponed so that he may obtain representation by an attorney or may 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. The prisoner may also request 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 committed while on supervision or unless the hearing officer finds good cause for their non-attendance. At the preliminary interview the hearing officer shall review the violation charges with the prisoner, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those adverse witnesses in attendance.

(c) At the conclusion of the preliminary interview, the hearing officer shall prepare and submit to the Regional Director a summary of the interview, which shall include recommended findings of whether there is probable cause to hold the prisoner for a revocation hearing. Upon receipt of the summary of the preliminary interview, the Regional Director shall either order the prisoner reinstated to supervision, order that a revocation hearing be conducted in the locality of the charged violation(s), or direct that the prisoner be transferred to a Federal institution for a revocation hearing.

(d) The prisoner shall be retained in local custody pending completion of the preliminary interview, submission of the summary of the hearing officer, and notification by the Regional Director relative to further action.

(e) A postponed preliminary interview may be conducted as a local revocation hearing, by an examiner panel or other hearing officer designated by the Regional Director provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.55 Local revocation hearing.

(a) If the prisoner requests a local revocation hearing prior to his return to a Federal institution, he shall be given a revocation hearing reasonably near the place of an alleged violation if the following conditions are met:

(1) The local hearing would facilitate the production of witnesses or the retention of counsel;

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

(3) The prisoner denies that he has violated any condition of his release. Otherwise, he shall be given a revocation hearing after he is returned to a Federal institution. However, the Regional Director may, on his own motion, designate a case for a local revocation hearing.

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

(c) Following the hearing the prisoner shall be retained in custody until final action is taken relative to revocation or reinstatement, or until other instructions are issued by the Regional Director.

§ 2.56 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only, by another official designated by the Regional Director. In the latter case, the decision relative to revocation shall be made by an examiner panel on the basis of the hearing summary pursuant to the provisions of § 2.23. A revocation decision may be appealed under the provisions of § 2.25, § 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 voluntary 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) If the alleged violator has not been convicted of a new criminal offense while under supervision and does not admit violation of any of the conditions of his release, the Board shall, on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocations may be based. Those adverse 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.

(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 reading or summarizing the appropriate document for the alleged violator.

§ 2.57 Disclosure of records.

(a) Prior to any parole hearing conducted in his case pursuant to §§ 2.13, or 2.14, or at any time during his incarceration, a prisoner is entitled to review reports in his institution file containing factual material bearing on his offense behavior, personal history, and institutional progress, as provided in Bureau of Prisons Policy Statement No. 2211.8, dated June 12, 1975, provided that disclosure of such reports would not (1) threaten the life or physical safety of any person; (2) interfere with law inforcement proceedings; (3) disclose investigative techniques of a law enforcement agency; or (4) constitute a cleary unwarranted invasion of personal privacy. The reports to be disclosed to the prisoner, subject to the above exceptions, include but are not limited to the following:

(i) Sentence Computation Records;

(ii) Classification material (including progress reports);

(iii) Incident (disciplinary) reports;

(iv) Medical reports;

(v) F.B.I. identification reports (rap sheets).

(b) All requests for disclosure of documents in the institution file shall be addressed to the Bureau of Prisons staff at least seven days prior to the time such documents are to be viewed. Copies of documents will be furnished under applicable Bureau of Prisons regulations.

(c) Sole authority to disclose a Presentence Investigation Report is retained by the prisoner's sentencing court. A request for disclosure of the Presentence Investigation Report must be addressed to the Court which originated the document.

(d) Copies of documents contained in Board of Parole Regional Office files shall be made available to prisoners, their authorized representatives, and other persons, upon written request in accordance with applicable law and Department of Justice Regulations at 28 C.F.R. Part 16, Subparts C and D. The Board reserves the right to invoke statutory exemptions to disclosure in appropriate cases.

§ 2.58 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 completion of the supervision period of such regular sentence 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. Should a releasee violate conditions of release during the Special Parole Term, he will be subject to revocation with the complete Special Parole Term to serve (but none of the separate regular sentence), 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 Board. 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.

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