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PAROLE PRACTICE MANUAL
for the District of Columbia

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TABLE OF CONTENTS

Chapter 3: Handling A Parole Case (continued)

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DEFINITIONS

1972 Guidelines: Regulations promulgated by the D.C. Board of Parole that govern parole decisions for D.C. Code offenders who committed the instant offense on or before March 3, 1985.

1987 Guidelines: Regulations promulgated by the D.C. Board of Parole that govern parole decisions for D.C. Code offenders who committed the instant offense between March 4, 1985 and August 4, 1998.

1991 Policy Guidance: Guidance promulgated by the D.C. Board of Parole that applies to D.C. Code offenders who committed the instant offense between December 16, 1991 and October 22, 1995.

1995 Policy Guidance: Guidance promulgated by the D.C. Board of Parole that applies to D.C. Code offenders who committed the instant offense between October 23, 1995 and August 4, 1998.

2000 Guidelines: Regulations promulgated by the U.S. Parole Commission that govern parole decisions for D.C. Code offenders who committed the instant offense between August 5, 1998 and August 4, 2000.

Adjudication: For juvenile offenders, a determination of whether a juvenile committed a criminal offense, analogous to a conviction for adult offenders.

Aftercare Programming: Programs that are mandated by the U.S. Parole Commission and implemented by CSOSA as conditions of parole. These programs often include substance abuse treatment, sex offender treatment, and psychological and social support.

Base Guideline Range: Under the 2000 Guidelines, the range of months that corresponds to the offender's Base Point Score.

Base Point Score: Under the 2000 Guidelines, the score that takes into account the offender's Salient Factor Score, as well as violence in the instant offense or prior offenses, and death of the victim or "high-level violence" in the instant offense.

Bureau of Prisons (BOP): A division of the U.S. Department of Justice responsible for the management and regulation of all federal penal and correctional institutions.

Community Supervision: A portion of a criminal sentence in which the offender is not incarcerated, but is required to adhere to certain conditions and may be subject to incarceration for failure to comply with the conditions. The primary forms of community supervision are parole, probation, or supervised release.

Community Supervision and Offender Services Agency (CSOSA): Federal agency that supervises D.C. Code offenders who are serving all or a portion of their sentences in the community under parole, probation, or supervised release.

CorrLinks: Email system used by prisoners in the federal Bureau of Prisons that is monitored by BOP staff.

Counselor: A BOP staff member who has regular, direct contact with the inmate, and may attend hearings, arrange legal calls and visits, and provide documentation about the inmate, among other duties. The precise duties of a counselor vary from institution to institution.

Case Manager: A BOP staff member who has regular, direct contact with the inmate, and may attend hearings, arrange legal calls and visits, and provide documentation about the inmate, among other duties. The precise duties of a case manager vary from institution to institution.

D.C. Board of Parole: District of Columbia agency that had authority over parole decisions for D.C. Code offenders prior to August 5, 1998. It was abolished as part of the National Capital Revitalization and Self-Government Improvement Act of 1997 and its responsibilities were transferred to the U.S. Parole Commission.

D.C. Code Offender: A person who has been convicted of a crime in violation of the laws of the District of Columbia.

D.C. Department of Corrections: District of Columbia agency that is responsible for managing D.C. correctional facilities, including the Central Detention Facility (D.C. Jail), the Correctional Treatment Facility, and halfway houses. Prior to 2001, it also managed the Lorton Correctional Complex, where D.C. Code felony offenders were incarcerated prior to their transfer to the federal Bureau of Prisons pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997.

Detainer: An assertion by another law enforcement agency that it has unresolved business with a prisoner after he has finished serving his current sentence but before he is released from custody. It can result in an additional period of confinement.

Determinate Sentence: A sentence that consists of a fixed term of years in prison, with no mechanism for parole. It also usually includes a separate term of supervised release in the community, which is imposed by the sentencing judge.

Disciplinary Hearing Officer (DHO) Hearing: A hearing in prison to adjudicate an alleged disciplinary infraction. DHO hearings are generally reserved for serious (100 or 200 level) infractions.

Docket Coordinator: The USPC staff person who is the point of contact for an attorney regarding an upcoming hearing. The Docket Coordinator can accept prehearing submissions, answer questions, and give information about the exact date and time of a hearing.

Good Time Credit: Reduction of a sentence that a prisoner can receive based on good conduct in prison.

Grid Score: Quantitative measure calculated on a scale of 1 to 5 as part of a parole hearing under the 1987 Guidelines. The Grid Score incorporates pre- and post-incarceration factors and generates a recommendation as to whether a prisoner should be granted or denied parole.

Hearing Examiner: USPC official who conducts grant of parole, parole revocation, and early termination of parole hearings and makes a recommendation as to the outcome.

Hit: *See* **Set off**.

Indeterminate Sentence: A sentence that consists of a range of years, with a minimum and maximum term of imprisonment. A prisoner becomes eligible for parole after serving the minimum term of years in prison, but if denied parole, can serve more time, up to the maximum term.

Instant Offense: The offense for which a prisoner is currently serving a sentence.

Legal Call: A phone call between an attorney and an inmate that must be pre-arranged with the inmate's counselor or case manager. A legal call must be "unmonitored," but that may mean simply that the call is not recorded. BOP staff might be present while the call takes place.

Lorton Correctional Complex: Former prison for D.C. Code felony offenders located in Virginia and operated by the D.C. Department of Corrections. It was closed in 2001 after all D.C. Code felony offenders were transferred to the federal Bureau of Prisons pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997.

National Capital Revitalization and Self-Government Improvement Act of 1997: Law passed by Congress in 1997, effective August 5, 1998, which transferred responsibility for D.C. Code felony offenders and community supervision from the District of Columbia to the federal government. It closed the Lorton Correctional Complex and transferred all D.C. Code offenders to the federal Bureau of Prisons, abolished the D.C. Board of Parole and transferred its responsibilities to the U.S. Parole Commission, and established CSOSA as the agency responsibility for community supervision of D.C. Code offenders, including parole, probation, and supervised release.

Notice of Action (NOA): Final written decision by USPC.

Parole: A form of community supervision where a prisoner with an indeterminate sentence is released from prison prior to the end of his sentence to serve the remaining time in the community. Release is conditioned on terms and conditions set by the U.S. Parole Commission.

Parole Effective Date: Release date set by USPC that is no more than nine months from the date of the parole hearing.

Parole "Mini-File": The documents that BOP prepares for USPC to review prior to a parole hearing.

Parole Revocation: A violation of parole such that the U.S. Parole Commission determines that the offender should be re-incarcerated for all or a portion of his remaining sentence and/or have all or a portion of the time that he has spent on parole rescinded and the end date of his sentence retarded.

Parole Violator: A person who has been released on parole but is found to have violated the terms of his parole, either because of technical violations or new criminal conduct.

Presentence Investigation Report (PSR/PSI): Report prepared to aid the judge in sentencing a person who has been convicted of a crime. It includes information about the instant offense, as well as the offender's prior criminal history and social, educational, and family history. It is not part of the public record and is disclosable only under certain circumstances, including representation in parole hearings.

Presumptive Parole Date: Release date set by USPC that is at least ten months but no more than three years from the date of the hearing, conditioned on continued good conduct in prison and a suitable release plan.

Progress Report ("Inmate Skills Development Plan"): Comprehensive report of a prisoner's institutional history prepared by BOP.

Reconsideration Hearing (Rehearing): A grant of parole hearing that is neither an initial hearing nor a hearing that takes place after an offender is returned to prison because of a parole violation.

Release Plan: An informal parole criterion that is weighted heavily by USPC in parole determinations. A release plan discusses the housing, employment, and community support that await a prisoner upon release.

Salient Factor Score (SFS): An actuarial risk assessment device that is based entirely on pre-incarceration factors, including prior criminal history, nature of the instant offense, age at the instant offense, and other factors.

Sentencing Reform Act of 2000: Law passed by the District of Columbia that moved D.C. from indeterminate sentencing to determinate sentencing, and thereby abolished parole for all criminal offenses committed on or after August 5, 2000.

Set off: A colloquial term for the length of time until a prisoner is eligible for a new hearing after he is denied parole. It is also referred to as a "hit."

Special Mail: A category of mail designated by BOP to include correspondence with attorneys. Special Mail must be marked as such, and may not be read or opened if the inmate is not present, though it may be searched for contraband.

Statutory Interim Hearing: A hearing for a D.C. Code offender who has had his parole revoked and been returned to prison because of parole violations and/or new criminal conduct.

Superior Program Achievement: Under the 2000 Guidelines, a discretionary determination by the hearing examiner as to a prisoner's notable prison programming that may reduce his term of incarceration.

Supervised Release: A fixed term of community supervision that is judicially imposed at the time of sentencing, typically following a fixed term of imprisonment.

Total Guideline Range: Under the 2000 Guidelines, the total amount of time, measured in months, that the U.S. Parole Commission calculates as presumptively appropriate for an offender to serve in prison.

Unit Discipline Committee (UDC): A committee consisting of two or more BOP staff in each institution that is charged with reviewing incident reports of alleged disciplinary infractions. The UDC can decide if an incident report should be dismissed, result in a sanction (usually for 300 or 400 level offenses), or, for serious offenses, be referred to the Disciplinary Hearing Officer (DHO).

U.S. Parole Commission (USPC): A division of the Department of Justice responsible for administering all aspects of parole for D.C. Code offenders and federal offenders. USPC is comprised of nine commissioners who issue final decisions, one of whom is a chairman, as well as a stable of hearing examiners who preside over hearings.

U.S. Probation Office (USPO): Federal agency that oversees probation for U.S. Code offenders and supervises parole for D.C. Code offenders who reside outside of the District of Columbia.

CHAPTER 1:
OVERVIEW OF PAROLE ELIGIBILITY FOR D.C. CODE OFFENDERS

I. Parole Basics

Parole is a mechanism for early release from prison and is granted to prisoners who demonstrate rehabilitation and compliance with institutional rules. In the District of Columbia, parole is a historical sentencing scheme and only prisoners sentenced under the District of Columbia Code ("D.C. Code") for offenses committed on or before August 4, 2000 are eligible to apply. Decisions to grant or deny parole are made by the United States Parole Commission (USPC), an independent entity within the Department of Justice. D.C. Code § 24-404 (2013). Once on parole, individuals serve out the remainder of their sentence in the community under the supervision of the Court Services and Offender Supervision Agency (CSOSA) if they return to D.C., or the U.S. Probation Office if they relocate elsewhere. Parole is considered a privilege, not a right, and there is no constitutionally protected liberty interest in parole. *See Greenholtz v. Inmates of Neb. Penal & Corr. Complex,* 442 U.S. 1, 7, 99 S. Ct. 2100, 2104 (1979).

A. Parole Eligibility and Indeterminate Sentences

A prisoner eligible for parole is serving an indeterminate sentence. An indeterminate sentence is a sentence that consists of a range of years (i.e., "five to fifteen years"), with a minimum and maximum term of imprisonment. The prisoner becomes eligible for parole after serving the minimum term, but if denied parole, can serve more time, up to the maximum number of years on the sentence.

> *Example: Indeterminate Sentence*
> Mr. Johnson is convicted of a homicide offense. The judge sentences Mr. Johnson to a prison term of twenty years to life. At twenty years, Mr. Johnson is eligible for parole, but can serve more time if USPC determines that he should not be released on parole. If released on parole at any time after twenty years, Mr. Johnson remains on parole until the maximum term of his sentence, which in this case is the rest of his life.

It is important to understand that individuals sentenced today under the D.C. Code are not eligible for parole. The Sentencing Reform Amendment Act of 2000 shifted D.C. from indeterminate to determinate sentencing and abolished parole. Sentencing Reform Amendment Act of 2000, D.C. Act 13-406, 47 D.C. Reg. 7249 (codified as amended at D.C. Code § 24-403.01 (2013 & Supp. 2016)). A determinate sentence is a sentence imposed by a judge for a fixed term with no parole mechanism for early release.[1] In addition to a prison term, a determinate sentence often includes a separate statutory term of supervised release imposed by the sentencing judge.

> *Example: Determinate Sentence*
> Mr. Johnson is convicted of a homicide offense. The judge sentences Mr. Johnson to thirty-five years in prison and five years of supervised release. Mr. Johnson must serve all thirty-five years of his sentence in prison, with certain reductions for good time credits. After serving thirty-five years in prison, Mr. Johnson is on supervised release in the community for five years.

1. Prisoners serving either indeterminate and determinate sentences may be eligible for early release through the accumulation of "good time" credit which is calculated based on the date and characteristics of the instant offense. Calculating an individual's good time credit is complex. For a comprehensive explanation of good time credit for D.C. Code offenders see U.S. Dep't of Justice, Bureau of Prisons Program Statements 5884.02 (2002) and 5880.32 (2003).

B. Understanding What It Means to Be on Parole

Parole and supervised release are both forms of community supervision. Parole is a granting of release from prison with terms and conditions set by USPC. D.C. Code § 24-404(a) (2013). The offender is on parole for the remainder of his indeterminate sentence or until USPC terminates legal custody.[2] *Id.* § 24-404(a)(1)-(2). If an offender violates the conditions of his parole, USPC can issue a warrant for his arrest. *Id.* § 24-405. Upon arrest, the offender has the opportunity to appear before USPC at a hearing. *Id.* § 24-406(a). Following the hearing, USPC has the discretion to revoke or modify parole. *Id.*

As a result of the Sentencing Reform Amendment Act of 2000, D.C. Code offenders are no longer eligible for parole or early release from prison. Instead, following a prison term, an offender's sentence may include a period of community supervision called "supervised release." *Id.* § 24-403.01(b)(1) (2013 & Supp. 2016). Similar to parole, supervised release imposes a set of terms and conditions that the offender must fulfill. *Id.* It involves supervision by CSOSA if the offender resides in the District of Columbia, or the U.S. Probation Office if the offender resides outside of the District of Columbia. *Id.* The number of years an offender is on supervised release is determined by the sentencing judge in accordance with D.C. Code Section 24-403.01(b)(2)-(4). USPC has jurisdiction over individuals on supervised release, as well as the authority to issue arrest warrants and revoke or modify supervised release based on a suspected violation. *Id.* § 24-403.01(b)(6)-(7).

II. Federal Jurisdiction Over D.C. Prisoners

Prior to August 5, 1998, D.C. prisoners convicted under the D.C. Code were under local jurisdiction. They were housed in facilities run by the D.C. Department of Corrections, and the D.C. Board of Parole was responsible for conducting parole hearings. That changed following enactment of the National Capital Revitalization and Self-Government Improvement Act of 1997. The Act, which became effective on August 5, 1998, had two major consequences. First, it transferred custody of D.C. Code felony offenders to the federal Bureau of Prisons (BOP).[3] National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105-33, § 11201(b), 111 Stat. 251, 712, 734 (1997). D.C. Code felony offenders were subsequently sent to federal prisons around the country and the Lorton Correctional Complex in Virginia, which had previously housed prisoners convicted under the D.C. Code, was shut down. *Id.* §§ 11201(b), (f). Second, the Act abolished the D.C. Board of Parole and gave USPC the authority to conduct parole hearings for eligible D.C. Code offenders. *Id.* § 11231(a)(1). USPC also has jurisdiction over federal parolees, but because federal parole was abolished by the Sentencing Reform Act of 1984, a large portion of USPC's parole docket now pertains to D.C. Code offenders. *See* Joint Resolution: Making continuing appropriations for the fiscal year 1985, and for other purposes, Pub. L. 98-473 § 211 *et seq*., 98 Stat. 1837, 1987 (1984).

2. There is a mechanism for early termination of parole for D.C. Code offenders. 28 C.F.R. § 2.95 (2016). Two years after a person is released on parole, USPC must review his case to determine if early termination is appropriate. *Id*. § 2.95(b). After five years on parole, the presumption of termination is in the parolee's favor, and he is entitled to a hearing to determine if there is a "likelihood that [he] will engage in any conduct violating criminal law." *Id*. § 2.95(c).

3. The D.C. Department of Corrections maintains jurisdiction over D.C. Code misdemeanor offenders. Balanced Budget Act of 1997, Pub. L. No. 105-33, § 11201(a)-(b), 111 Stat. 251, 734 (1997) (codified as amended at D.C. Code § 24-101(a)-(b) (2013)).

CHAPTER 2:
LEGAL FRAMEWORK FOR PAROLE ELIGIBILITY

I. Overview

The legal standard for parole is set forth in the D.C. Code and further elaborated upon in regulations promulgated by both the D.C. Board of Parole and USPC. There have been significant changes in the regulations affecting parole cases over the last forty years, but only minor, arguably inconsequential, changes to the statute.

The parole eligibility statute, codified at D.C. Code Section 24-404(a), states in relevant part:

> Whenever it shall appear to the United States Parole Commission ("Commission") that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his or her release is not incompatible with the welfare of society, and that he or she has served the minimum sentence imposed or the prescribed portion of his or her sentence, as the case may be, the Commission may authorize his or her release on parole upon such terms and conditions as the Commission shall from time to time prescribe.

The three criteria set forth in the statute are the baseline requirements for parole eligibility. The hearing examiner will look for indicators that the prisoner meets the statutory requirements and is likely to assimilate back into society without reoffending. It is important to note, however, that even if these criteria are satisfied, the statute grants USPC wide discretion in determining whether to grant parole ("the Commission *may authorize* […] release.") D.C. Code § 24-404(a) (2013) (emphasis added).

In addition to the statute, the implementing regulations set forth additional criteria governing a prisoner's parole eligibility. There are three sets of regulations, and the set that governs a particular prisoner's case can be determined by the date of the offense of conviction, known as the "instant offense." Two sets of regulations are historical and were promulgated by the now-defunct D.C. Board of Parole. The final set is current law and was promulgated by USPC. Each will be discussed in further detail below.

II. Determining Which Guidelines Apply

The first and most important step in litigating a grant of parole case is to determine which regulations apply. Parole regulations are typically referred to as "guidelines," although they carry the weight of law. Generally, there will be no dispute as to which guidelines apply, but occasionally there may be an ex post facto basis for arguing that a prisoner should be heard under a different set of guidelines.

There are three sets of parole regulations: the 1972 Guidelines, the 1987 Guidelines, and the 2000 Guidelines. Prisoners who are eligible for parole under the 1987 Guidelines may also be subject to one of two sets of policy guidance. The applicable set of guidelines is determined by the date of the instant offense.

Date of Instant Offense	Applicable Regulations
On or before March 3, 1985	1972 Guidelines
March 4, 1985 to December 15, 1991	1987 Guidelines only
December 16, 1991 to October 22, 1995	1987 Guidelines + 1991 Policy Guidance
October 23, 1995 to August 4, 1998	1987 Guidelines + 1995 Policy Guidance
August 5, 1998 to August 4, 2000	2000 Guidelines

III. The 1972 Guidelines

A. Background and History

The 1972 Guidelines are a historical set of regulations that once governed parole cases for D.C. Code offenders. They were later replaced by the 1987 Guidelines, and then, when USPC assumed jurisdiction over the District's parole process, by the 2000 Guidelines. However, as the result of a settlement in the ex post facto case of *Daniel v. Fulwood*, 766 F.3d 57 (D.C. Cir. 2014) and a subsequent rule change by USPC, portions of the 1972 Guidelines have been revived in parole cases where the instant offense was committed on or before March 3, 1985.

In *Daniel*, plaintiffs raised an ex post facto claim, arguing that retroactive application of the 2000 Guidelines to a prisoner who committed the instant offense at a time when the 1972 Guidelines were in effect would create a significant risk of prolonging that prisoner's term of incarceration. *See id.* at 58. On appeal from the District Court's denial of USPC's motion to dismiss, the D.C. Circuit held that plaintiffs' ex post facto claim was "sufficiently plausible" to survive. *Id.* at 65. As a result of this holding, USPC agreed to a rule change. The new rule, which went into effect on October 19, 2015, requires that a prisoner who committed the instant offense on or before March 3, 1985, and is not incarcerated as a parole violator, be evaluated for parole under the substantive eligibility standard in Section 105.1 of the 1972 Guidelines. 28 C.F.R. § 2.80(p)(1)-(2) (2016). However, such a prisoner is still subject to the procedural rules set forth in the 2000 Guidelines. *See infra* Ch. 3 for a discussion of the procedures governing grant of parole matters.

B. Application of the 1972 Guidelines

The 1972 Guidelines are the only set of regulations that do not have a numerical component or score that corresponds to a presumption in favor of or against parole. Rather, the Guidelines require USPC to consider the inmate holistically and to use particular factors to assess readiness for parole. The hearing examiner will likely not ask about each factor individually, so it is important to prepare the prisoner to discuss as many factors as possible even if he is not asked about them directly. This section lays out the factors and discusses information that may be relevant to each factor.

> **Factor 1: The offense, noting the nature of the violation, mitigating or aggravating circumstances and the activities and adjustment of the offender following arrest if on bond or in the community under any presentence type arrangement.** 28 C.F.R. § 2.80(p)(4)(i) (2016); 9 DCRR § 105.1(a) (1982).

For many cases under the 1972 Guidelines, the first factor can be one of the most challenging. If a prisoner is serving a sentence for a crime he committed prior to 1985, it is likely that the instant offense was quite severe, possibly with aggravating circumstances. The hearing examiner will rely on the Presentence Investigation Report (PSI or PSR) as the official version of the offense and may pay close attention to whether the prisoner provides an account of the instant offense that is consistent with the PSR. *See infra* Ch. 2 § VII(A) for a discussion of acceptance of responsibility. *See also infra* Ch. 3 §§ III(A)(i) and III(b)(iv) for an explanation of the PSR and how to obtain it.

> **Factor 2: Prior history of criminality, noting the nature and pattern of any prior offenses as they may relate to the current circumstances.** 28 C.F.R. § 2.80(p)(4)(ii) (2016); 9 DCRR § 105.1(b) (1982).

This factor pertains to the prisoner's prior criminal record. USPC may consider any prior offense, even those that occurred decades ago. If the prisoner has a substantial criminal record or any prior offenses that were particularly serious or similar in nature to the instant offense, the hearing examiner may ask for a detailed accounting of the facts. The criminal record can be determined by examining the prisoner's most recent PSR. *See infra* Ch. 3 §§ III(A)(i) and III(b)(iv) for an explanation of the PSR and how to obtain it.

Factor 3: Personal and social history of the offender, including such factors as his family situation, educational development, socialization, marital history, employment history, use of leisure time and prior military experience, if any. 28 C.F.R. § 2.80(p)(4)(iii) (2016); 9 DCRR § 105.1(c) (1982).

Most of the elements in this factor can be deduced from the PSR. One element that bears further explanation is the prisoner's educational development. BOP regulations require that prisoners without a high school diploma or GED attend 240 hours of literacy classes or earn a GED while incarcerated. 28 C.F.R. § 544.70 (2016). Prisoners who have failed to earn a GED after many years of trying may be exempted from the GED requirement and diverted to other work or programming. *Id.* § 544.71(b); U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5350.28 § 12 (Dec. 1, 2003).

PRACTICE TIP

If your client has not earned a GED, be prepared to discuss an exemption from this requirement or to highlight a substantial commitment to other prison work or programs. *See infra* Ch. 3 § III(B)(i) for an explanation of how to obtain prison records.

Factor 4: Physical and emotional health and/or problems which may have played a role in the individual's socialization process, and efforts made to overcome any such problems. 28 C.F.R. § 2.80(p)(4)(iv) (2016); 9 DCRR § 105.1(d) (1982).

Many prisoners have experienced a difficult childhood or young adulthood, and early challenges may manifest in the form of mental health issues, substance abuse issues, educational and learning deficiencies, and difficulty obtaining and maintaining employment. This factor asks the prisoner to discuss any challenges he has faced as well as the efforts he has made to overcome those challenges. The PSR often contains details regarding a prisoner's childhood and life prior to incarceration. *See infra* Ch. 3 §§ III(A)(i) and III(B)(iv) for an explanation of the PSR and how to obtain it.

Factor 5: Institutional experience, including information as to the offender's overall general adjustment, his ability to handle interpersonal relationships, his behavior responses, his planning for himself, setting meaningful goals in areas of academic schooling, vocational education or training, involvements in self-improvement activity and therapy and his utilization of available resources to overcome recognized problems. Achievements in accomplishing goals and efforts put forth in any involvements in established programs to overcome problems are carefully evaluated. 28 C.F.R. § 2.80(p)(4)(v) (2016); 9 DCRR § 105.1(e) (1982).

The prisoner's institutional disciplinary record will almost certainly be raised during his hearing. USPC can consider infractions incurred in the BOP as well as infractions incurred while the prisoner was housed at Lorton and in the custody of the D.C. Department of Corrections. Although USPC will often focus only on recent disciplinary infractions, there is no staleness limitation on the infractions that can be taken into account, and older infractions may be factored into a parole decision under the 1972 Guidelines, particularly if they were serious or violent. *See infra* Ch. 3 § III(B)(i) for an explanation of how to obtain prison records.

Factor 6: Community resources available to assist the offender with regard to his needs and problems, which will supplement treatment and training programs begun in the institution, and be available to assist the offender to further serve in his efforts to reintegrate himself back into the community and within his family unit as a productive useful individual. 28 C.F.R. § 2.80(p)(4)(vi) (2016); 9 DCRR § 105.1(f) (1982).

To address this factor, the prisoner may consider developing a release plan to present at his parole hearing. Important elements of a release plan typically include stable housing, financial stability (including future employment and funds saved during incarceration), and community support. *See infra* Ch. 2 § VII(B) for a more detailed discussion of the release plan.

In addition, prisoners with a history of substance abuse or sex offenses may need to convey a willingness to take advantage of aftercare programming or counseling upon release. USPC may also consider whether a prisoner with these issues has sought to address them through BOP programming while incarcerated.

IV. The 1987 Guidelines

A. Background and History

The 1987 Guidelines are a historical set of regulations that once governed parole cases for D.C. Code offenders, but were later replaced by the 2000 Guidelines when USPC assumed jurisdiction over the District's parole process. In 2008, however, the 1987 Guidelines were revived through litigation of an ex post facto claim and a subsequent USPC rule change. Paroling, Recommitting, and Supervising Federal Prisoners, 74 Fed. Reg. 58,540 (Nov. 13, 2009). In *Sellmon v. Reilly*, 551 F. Supp. 2d 66, 87, 99 (D.D.C. 2008), a federal district court held that retroactive application of the 2000 Guidelines to an offender who committed his crime on or after March 4, 1985 and on or before August 4, 1998 had significantly increased the risk of a longer term of incarceration than would have resulted under the 1987 Guidelines in effect at the time of the offense. As such, application of the 2000 Guidelines to the named prisoners in *Sellmon* was deemed a violation of the *Ex Post Facto* Clause of the United States Constitution and the court ordered new parole hearings for the *Sellmon* plaintiffs under the 1987 Guidelines. *See Sellmon*, 551 F. Supp. 2d at 68, 99–100. Following *Sellmon*, USPC promulgated 28 C.F.R. § 2.80(o) to extend application of the 1987 Guidelines to any prisoner who committed his offense on or after March 4, 1985 but on or before August 4, 1998, and who is not incarcerated as a parole violator.

B. Application of the 1987 Guidelines

The 1987 Guidelines use a point score system to determine whether an offender is suitable for parole. D.C. Mun. Regs., tit. 28, §§ 204.1-204.22 (1985). The Guidelines list four factors that USPC must take into account: two based on pre-incarceration factors and two based on post-incarceration factors. The first and "primary" factor is the *degree of risk* posed by an offender "based on [the] calculation of the Salient Factor Score, [which is] an actuarial risk assessment device that relies exclusively on information known at the time of sentencing." *Sellmon*, 551 F. Supp. 2d at 70. The other pre-incarceration factor is the *type of risk* posed by the offender. If the current offense or two prior felony convictions involved violence, weapons, and/or drug trafficking, that counts against the offender. D.C. Mun. Regs., tit. 28, §§ 204.18(a)-(g) (1985); *see also Sellmon*, 551 F. Supp. 2d at 70.

The two post-incarceration factors are the aggravating factor of disciplinary infractions "serious or repetitious enough to impact negatively on the parole decision" and the mitigating factor of sustained program or work assignment achievement. *Sellmon*, 551 F. Supp. 2d at 70-71; D.C. Mun. Regs., tit. 28, §§ 204.18(h)-(i) (1985).

Each prisoner receives an allocation of points that corresponds to the pre- and post-incarceration factors, and the points are then totaled to arrive at a Grid Score. D.C. Mun. Regs., tit. 28, § 204.19 (1985). A prisoner's Grid Score dictates whether he is presumptively eligible for parole. *Id.* However, USPC maintains substantial discretion to deny or grant parole irrespective of the presumption indicated by the Grid Score. *Id.* § 204.22.

i. Calculating the Salient Factor Score

The procedure for calculating the Salient Factor Score (SFS) is found at Title 28 of the D.C. Municipal Regulations, Sections 204.2 to 204.17, and the corresponding worksheet contained in Appendix 2-1. The SFS is based on an actuarial formula that purports to determine the risk of reoffense; it takes into account the prisoner's prior convictions and adjudications, any prior commitments of more than 30 days, the offender's age at the commission of the instant offense, any recent commitment-free period, the status of the prisoner at the time of the current offense, and any history of heroin or opiate dependence. D.C. Mun. Regs., tit. 28, §§ 204.2-204.27, app. 2-1 (1985).

The SFS is on a scale of 1 through 10, with a higher score indicating a lower risk of reoffense. *See* D.C. Mun. Regs., tit. 28, § 204.17, app. 2-1 (1985). Typically, all information relevant to the SFS can be obtained through the Presentence Investigation Report (PSI or PSR), although sometimes juvenile adjudications are not included in the PSR. The 1987 Guidelines explain how to interpret your client's personal and offense characteristics for the purposes of calculating the SFS. *See id.* §§ 204.4-204.16 (1985). *See infra* Ch. 3 §§ III(A)(i) and III(B)(iv) for an explanation of the PSR and how to obtain it.

The SFS is calculated for each prisoner at the initial parole hearing, and, since it is based on pre-incarceration factors, will not change at subsequent hearings.[4] If you represent a prisoner at his initial hearing, you must calculate the SFS from scratch and the hearing examiner will do the same. Any discrepancies between the two calculations should be resolved at the hearing. Although the hearing examiner will typically rely on the PSR to calculate the SFS, he or she may also have access to additional documentation that could influence the score.

If you represent a prisoner at a rehearing, USPC's calculation of the SFS will be contained in documents from the initial hearing. Nonetheless, it is always worthwhile to re-calculate the SFS as a mistake might be material in later determining the Grid Score.

ii. Calculating the Grid Score

a. *Initial Hearings*

To calculate the Grid Score for the initial hearing, first complete the "Type of Risk Assessment" worksheet in Appendix 2-1 of the 1987 Guidelines. The "pre-incarceration" questions ask whether the prisoner caused or threatened death or serious bodily injury to another person, whether the prisoner engaged in drug trafficking, whether the prisoner has two or more prior felony convictions, and whether the offense involved a dangerous weapon. Answers to these questions can be found in the PSR.

The "post-incarceration" factors ask whether the prisoner has committed "serious" disciplinary infractions or demonstrated "sustained achievement" in the areas of prison programs, industries, or work assignments while incarcerated. Answers to these questions will largely be found in the prison file, particularly in the Progress Report (titled "Inmate Skills Development Plan"), the Inmate Education Data document, and the Chronological Disciplinary Record. *See infra* Ch. 3 § III(B)(i) for an explanation of how to obtain prison records. The terms "serious disciplinary infraction" and "sustained achievement" are not defined further in the 1987 Guidelines, but do recieve further treatment in the 1991 Policy Guidance. *See infra* Ch. 2 § IV(B)(iii).

The second step toward computing the Grid Score is to complete the "Point Assignment Grid Adult Offenders" worksheet in Appendix 2-1 of the 1987 Guidelines. This worksheet assigns points to the SFS, the "Type of Risk" factors, and institutional behavior, and produces a Grid Score from 0 to 5. *See* D.C. Mun. Regs., tit. 28, §§ 204.18-19, app. 2-1 (1985).

Start by converting the SFS into a number from 0–3, based on the level of risk:

- If your client has an SFS of 10–9, his risk level is low, and he receives 0 points.
- If your client has an SFS of 8–6, his risk level is fair, and he receives 1 point.
- If your client has an SFS of 5–4, his risk level is moderate, and he receives 2 points.
- If your client has an SFS of 3–0, his risk level is high, and he receives 3 points.

For the "Type of Risk" category in Appendix 2-1, add 1 point to the Grid Score if you check "yes" to *any* of the questions regarding the prisoner's pre-incarceration history of violence, weapons, or drug trafficking. The maximum number of points that can be added in this category is 1, even if you have multiple "yes" answers. If you answered "no" to all pre-incarceration questions, the number of points for "type of risk" will be 0. Finally, you must account for the prisoner's institutional record. If the prisoner has any "negative institutional behavior," add 1 point. D.C. Mun. Regs., tit. 28, § 204.18(h), app. 2-1 (1985). If the prisoner has "program achievement," you subtract 1 point. D.C. Mun. Regs., tit. 28, § 204.18(i), app. 2-1 (1985).

The Grid Score is a number from 0 to 5. At an initial hearing, the Grid Score carries the following presumptions:

- If Grid Score = 0 → Parole shall be granted at initial hearing with low level of supervision required;
- If Grid Score = 1 → Parole shall be granted at initial hearing with high level of supervision required;
- If Grid Score = 2 → Parole shall be granted at initial hearing with highest level of supervision required;
- If Grid Score = 3–5 → Parole shall be denied at initial hearing and rehearing scheduled.

See id. § 204.19, app. 2-1 (1985).

4. If, however, a prisoner is released and then re-incarcerated on a parole violation, the SFS will change to reflect the new criminal activity. Subsequent reparole hearings will be based on the newly calculated SFS.

b. *Rehearings*

For a rehearing, refer to the Grid Score computed at the prisoner's prior parole hearing. To determine whether USPC computed the prior Grid Score properly, undertake the calculations described in Chapter 2, Section IV(B)(ii)(a) and set forth in the worksheets in Appendix 2-1 of the 1987 Guidelines. Then, using the "Point Assignment Grid and Findings Worksheet for Rehearings—Adult and YCA Offenders," which is found in Appendix 2-2 of the 1987 Guideline, calculate the new Grid Score.

At rehearings, the Grid Score is computed based on the institutional record of the prisoner since the last hearing. D.C. Mun. Regs., tit. 28, § 204.21, app. 2-2 (1985). To arrive at the new Grid Score, add one point to the prior Grid Score for any "negative institutional behavior" and subtract 1 point from the prior Grid Score if there has been "program achievement" since the last hearing. *Id.* At a rehearing, the Grid Score carries the following presumptions:

- If Grid Score = 0–3 → Parole shall be granted at this rehearing with the highest level of supervision required;
- If Grid Score = 4–5 → Parole shall be denied and a rehearing date scheduled.

See infra Ch. 3 § III(B)(i) for an explanation of how to obtain prison records.

Example: Grid Score Calculation (Initial Hearing)

This is the initial parole hearing for Mr. Ramos, who was convicted of second degree murder for shooting a rival drug dealer during a street altercation. In prison, he has had one disciplinary infraction for possession of a knife in his cell, but has consistently programmed and worked throughout his incarceration. You calculate his SFS as 4. To calculate his Grid Score, start with his SFS. An SFS of 4 corresponds to a risk group of "moderate," and earns Mr. Ramos 2 points. The offense involved violence, weapons, and drug trafficking, but you add only 1 point because that is the maximum he can receive in the "Type of Risk" category. Possession of a knife is a fairly serious disciplinary infraction, but since the knife was never used in a fight, you have a choice as to whether you will add 1 point for Negative Institutional Behavior and you may need to defend your choice to USPC. If the infraction is designated as a Disciplinary Hearing Officer (DHO) level offense (usually a 100 or 200 level), it is likely that USPC will add a point. For Mr. Ramos's work and programming, subtract 1 point for Program Achievement. **His total Grid Score is likely to be 3, indicating that parole should be denied at his initial hearing**.

iii. 1991 and 1995 Policy Guidance

The D.C. Board of Parole promulgated two sets of policy guidance, in 1991 and 1995 respectively, to be used by hearing examiners adjudicating cases under the 1987 Guidelines. Today, USPC applies the 1991 Policy Guidance to prisoners who committed the instant offense between December 16, 1991 and October 22, 1995. Policy Guidance, D.C. Board of Parole (Dec. 16, 1991) [hereinafter "1991 Policy Guidance"]. The 1995 Policy Guidance applies to prisoners who committed the instant offense between October 23, 1995 and August 4, 1998. Policy Guidance, D.C. Board of Parole (Oct. 23, 1995) [hereinafter "1995 Policy Guidance"]. The policy guidance serves as a supplement to the Guidelines.

The Parole Board's stated purpose in promulgating each guidance was to enhance uniformity in application of the standards set forth by the 1987 Guidelines. 1991 Policy Guidance § II; 1995 Policy Guidance § II. In particular, the Policy Guidance helps to elucidate which aspects of a prisoner's record should factor into the calculation of his Grid Score. The 1991 Policy Guidance further defines "negative institutional behavior" by designating particular "Class I" (i.e., 100 level) or "Class II" (i.e., 200 level) offenses as encompassed by the definition. *See* 1991 Policy Guidance § VI(A)(1). The 1991 Policy Guidance also further defines "sustained program or work assignment achievement" and lists particular educational, vocational, treatment, and work achievements that count in the prisoner's favor. *Id.* Finally, the 1991 Policy Guidance offers a set of factors that may countervail a recommendation to deny parole, such as exceptional work history or a record of exclusively trivial offenses, as well as factors that may countervail a recommendation to grant parole, such as an instant offense that involved unusual cruelty to the victim. *Id.* § VI(B)-(C).

The 1995 Policy Guidance focuses exclusively on "factors favoring release" and "factors favoring incarceration." 1995 Policy Guidance § VI. Factors favoring release include a record of nonviolent offenses, substantial cooperation with the government, and the availability of community resources that may lead to a better parole prognosis, among others. *Id.* § I(A). Factors favoring incarceration include prior failure under community supervision, serious negative institutional behavior, and an opportunity but little effort to engage in productive programming or work. *Id.* § VI(B).

iv. Discretion to Depart from the Grid Score Presumption

In "unusual circumstances," USPC is authorized to "waive" the SFS and Grid Score in order to grant or deny parole. D.C. Mun. Regs., tit. 28, § 204.22 (1985). If USPC chooses to depart from the Grid Score's presumption for or against parole, it is required to "specify in writing those factors which it used to depart." *Id.* Appendix 2-1 contains a list of reasons that USPC may rely upon to reach a different outcome than indicated by the Grid Score.

PRACTICE TIP

Anecdotally, USPC appears to rely frequently upon the justification that the prisoner's instant offense involved "unusual cruelty to victims" when departing from a Grid Score presumption in favor of parole. D.C. Mun. Regs., tit. 28, app. 2-1. If your client has a presumptive parole score but the hearing examiner departs from the guidelines, ask the hearing examiner on the record for the specific reason for the denial if s/he does not state it.

Until July 2015, it was unclear whether USPC was required to limit departures from the Grid Score presumption to the enumerated reasons set forth in Appendix 2-1. However, in the case of *Bailey v. Fulwood*, 793 F.3d 127, 132-34 (D.C. Cir. 2015), the D.C. Circuit held that USPC has broad discretion to depart from the Grid Score's presumption for virtually any reason related to the prisoner's risk of recidivism. The Court's analysis rested on the statutory standard for parole, which vests authority in USPC to determine suitability for parole based on an assessment of the prisoner's compatibility with the welfare of society. *Id.* In *Bailey*, USPC departed from the presumption of parole indicated by the Grid Score because the prisoner, a convicted sex offender, had not participated in programming addressing the underlying offense and had continued to deny the offense conduct, among other reasons. *Id.* at 131. Although such justifications do not appear in the enumerated list of departures set forth in Appendix 2-1, the Court upheld USPC's decision not to grant parole. *Id.* at 132–34.

v. The 2000 Guidelines

A. Background and History

In 1997, the National Capital Revitalization and Self-Government Improvement Act transferred jurisdiction over D.C. parole decisions from the D.C. Board of Parole to USPC. National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105-33, 111 Stat. 712 (1997). *See supra* Ch. 1 § II. Thereafter, USPC promulgated its own set of regulations for D.C. Code offenders—known as the "2000 Guidelines"—to displace the 1987 Guidelines previously in force. Once enacted, USPC applied the 2000 Guidelines to all parole hearings conducted for D.C. Code offenders regardless of the date of the instant offense, excepting only prisoners who had already been heard under the 1987 Guidelines at an initial hearing prior to to August 5, 1998, in which case USPC continued to apply the 1987 Guidelines. Paroling, Recommitting, and Supervising Federal Prisoners, 65 Fed. Reg. 70, 663 (Nov. 27, 2000). The 2000 Guidelines governed all parole hearings for D.C. Code offenders until two ex post facto cases, followed by USPC rule changes, reinstated the 1972 and 1987 Guidelines for eligible prisoners. *See supra* Ch. 2 §§ III-IV. Now, the 2000 Guidelines apply only to D.C. Code offenders who committed the instant offense between August 5, 1998 and August 4, 2000. *Id.* §§ 2.70(b), (e); 2.80(o)-(p).

B. Application of the 2000 Guidelines

The 2000 Guidelines are similar to the 1987 Guidelines in that they also utilize a quantitative assessment to generate a recommendation to grant or deny parole, based in part on the calculation of a Salient Factor Score (SFS). A major change in the 2000 Guidelines is the use of the "Total Guideline Range," which is the sum total of the prisoner's minimum sentence *plus* a range of months that USPC calculates based on pre- and post-incarceration factors and adds to the minimum sentence to determine whether a prisoner is presumptively

ready for parole. *See* 28 C.F.R. § 2.20 (2016). Specifically, the regulations state that the Total Guideline Range indicates the "customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics." *Id.* § 2.20(b). Prisoners often have difficulty understanding their Total Guideline Range because it often presumptively extends the minimum term of incarceration imposed by the sentencing court. As with the other sets of regulations, USPC has discretion to deviate from the Total Guideline Range to either grant or deny parole, even where the Total Guideline Range indicates otherwise. *See id.* § 2.80(n).

i. Calculating the Total Guideline Range

The Total Guideline Range is the total amount of time, measured in months, that USPC calculates as appropriate for the offender to serve in prison. The calculation of the Total Guideline Range begins with the prisoner's judicially imposed minimum sentence and adds a range of months to the prison term that USPC determines is warranted based on pre- and post-incarceration factors.

Step 1: Calculate the SFS

The first step in calculating the Total Guideline Range is to calculate the SFS using Chapter 28 of the Code of Federal Regulations and the corresponding USPC Rules and Procedures Manual. You should begin at 28 C.F.R. § 2.80(c), "Guidelines for D.C. Code Offenders," which tells you that the client's SFS will be calculated according to 28 C.F.R. § 2.20. The SFS is on a scale of 1 to 10, with a higher score indicating a "better," or less serious, risk for parole. *Id.* § 2.80(f).

The process for calculating the SFS under the 2000 Guidelines is similar—but not exactly the same—as the process for calculating the SFS under the 1987 Guidelines. Under the 2000 Guidelines, the category of "opiate or heroin dependence" is eliminated. Moreover, the 2000 Guidelines provide additional guidance on the type of information relevant to each factor. *Id.* § 2.20.

PRACTICE TIP

If your client has juvenile convictions (called "adjudications") which are contributing to a lower SFS, you may wish to obtain the juvenile court records to determine whether you can make an argument that the facts of the adjudication(s) do not justify an increase in the Total Guideline Range. Juvenile records are typically sealed, but attorneys can make a simple request to unseal and access the records by completing a form at the D.C. Superior Court's Juvenile and Neglect Branch.

Step 2: Calculate the Base Point Score

The Base Point Score is the next building block for determining the Total Guideline Range under the 2000 Guidelines. To calculate the Base Point Score, turn to 28 C.F.R. § 2.80(f) and complete the "Point Assignment Table."

Starting with Category I, plug in the prisoner's SFS to determine the corresponding risk level. *Id.* The better the risk category, the fewer points the prisoner will receive. Category II accounts for any violence in the instant offense or prior offenses. Information about prior offenses can be found in the PSR. Category III considers the death of the victim or "high level violence" in the instant offense only. The regulations provide definitions and guidance regarding the terms used in the Point Assignment Table, including many of the terms used in Category III. *Id.* § 2.80(g). Add together the points from Categories I through III to get the Base Point Score. *Id.* § 2.80(f).

Step 3: Calculate the Base Guideline Range and Months to Parole Eligibility

Next, proceed to 28 C.F.R. § 2.80(h) to determine which Base Guideline Range corresponds to your client's Base Point Score. For instance, a Base Point Score of "5" adds 18 to 24 months to the prisoner's minimum sentence. After that, you are instructed to "[d]etermine the total number of months to parole eligibility." 28 C.F.R. § 2.80(i). This is determined by examining the prisoner's judicially imposed minimum sentence. So, for example, if the prisoner's sentence is ten to thirty years, the number of months to parole eligibility is 120, which is the same as his minimum ten-year sentence.

Step 4: Calculate the Guideline Range for Disciplinary Infractions

This step determines whether the prisoner should receive yet additional months added to his minimum prison term because of disciplinary infractions. 28 C.F.R. § 2.80(j). For an initial hearing, "any significant disciplinary infractions since the beginning of confinement on the current offense" will add months to the Total Guideline Range. *Id.* For a rehearing, only infractions that occurred since the previous hearing are added to the Total Guideline Range. *Id. See infra* Ch. 3 § III(B)(i).

Section 2.80(j) instructs you to turn to 28 C.F.R. § 2.36 to determine the range of months that should be added for each offense. *Id.* Note that Section 2.36(b) offers USPC discretion to impose a guideline range that is above or below the recommended range generated by Section 2.36(a) based on mitigating or aggravating factors.

Step 5: Calculate the Guideline Range for Superior Program Achievement

If a prisoner is found to have superior program achievement, this will lower the Total Guideline Range. The regulations indicate that the award "shall be one-third of the number of months during which the prisoner demonstrated superior program achievement." 28 C.F.R. § 2.80(k). At an initial hearing, where superior program achievement is found, it is presumed that the award will be calculated based on the entire period of incarceration. At a rehearing, the superior program achievement award is based on the period of time since the last hearing. *Id.* At any hearing, however, if USPC determines that superior programming did not occur for the entire eligible period, it can reduce the award accordingly. *Id.* What constitutes superior program achievement is subjective, and USPC has discretion to decide whether a prisoner's programming history merits superior program achievement credit.

Step 6: Calculate the Total Guideline Range

After completing the steps above, you must calculate the minimum and maximum numbers of the prisoner's Total Guideline Range. 28 C.F.R. § 2.80(*l*)-(m). If this is an initial hearing, add together the following: the minimum number of the Base Guideline Range from Section 2.80(h), the number of months until parole eligibility from Section 2.80(i), and the minimum number of the guideline range for disciplinary infractions, if applicable, from Section 2.80(j). Then, if applicable, subtract the superior program achievement award from Section 2.80(k). § 2.80(*l*)(1). Then follow the same steps for the maximum number calculated under each section. § 2.80(*l*)(2). The result is the Total Guideline Range.

If this is not an initial hearing, the calculation is much simpler. Take the Total Guideline Range from the previous hearing, calculate the guideline range for any disciplinary infractions since the previous hearing in accordance with 28 C.F.R. § 2.80(j) and any superior program achievement since the last hearing in accordance with Section 2.80(k), and add or subtract those numbers from the previous range to get the new Total Guideline Range. § 2.80(m). You may want to confirm that the Total Guideline Range was calculated properly at the previous hearing.

ii. Discretion to Depart from the Total Guideline Range

As with the other parole regulations, the 2000 Guidelines include a provision allowing USPC "in unusual circumstances" to grant or deny parole to a prisoner outside the recommendation generated by the Total Guideline Range. 28 C.F.R. § 2.80(n)(1) (2016). An upward departure from the guidelines may be made when USPC determines that a prisoner is a "a more serious parole risk" than the guidelines indicate, while a downward departure may be made when a prisoner has a better parole prognosis than indicated by the Salient Factor Score. *Id.*

Sections 2.80(n)(2)-(3) list factors that may justify a departure from the Total Guideline Range, and these factors should be studied carefully so that appropriate rebuttal evidence may be presented at the hearing. The regulations expressly indicate that the list of factors is non-exclusive and that USPC may make a decision outside the Total Guideline Range for a non-enumerated reason.

Example: Total Guideline Range Calculation (Initial Hearing)

Joseph Ryan was convicted of armed robbery for an offense that occurred in 1999 and sentenced to fifteen to forty-five years. His prior offenses include two sales of a controlled substance. During his time in prison, he has incurred only one disciplinary infraction, for assault with a knife. Five years ago, Mr. Ryan significantly increased his programming, and since then, he has taken 1300 hours of programming and rehabilitative courses, in addition to his job working in the prison's UNICOR program. His Salient Factor Score is 5.

To calculate Mr. Ryan's Total Guideline Range, first determine his Base Point Score. Because his Salient Factor Score is 5, he is deemed to be a "fair risk" for parole and receives 2 points in Category I. Mr. Ryan's instant offense was violent, but he has no violence in any of his prior offenses, so he accrues 2 points in Category II. Mr. Ryan's instant offense did not result in the death of the victim or constitute high level violence, so he gets 0 points in Category III. Therefore, his Base Point Score is 4.

Mr. Ryan's Base Point Score of 4 results in a Base Guideline Range of 12 to 18 months. Add to the Base Guideline Range the number of months until Mr. Ryan's parole eligibility, which is the minimum number of his judicially imposed sentence, or 180 months (fifteen years). Next, calculate Mr. Ryan's guideline range for his disciplinary infraction, using 28 C.F.R. §§ 2.36 and 2.20. Since Mr. Ryan used a knife in the commission of his assault, the offense severity level under Section 2.20 is Category 5. Therefore, 36 to 48 months must be added to the Base Guideline Range. 28 C.F.R. § 2.36 (2016). Last, calculate superior program achievement. If the hearing examiner agrees that Mr. Ryan qualifies for superior program achievement over the past five years, his award for that achievement is one-third of the total time that the superior program achievement has been sustained, or 20 months.

Finally, to calculate the Total Guideline Range, combine the relevant figures as follows:

Months to parole eligibility:	180 months
Base Guideline Range:	+ 12–18 months
Disciplinary Guideline Range:	+ 36–48 months
Superior Program Achievement:	- 20 months
Total Guideline Range:	**208–226 months**

Example: Total Guideline Range Calculation (Rehearing)

This is the second parole hearing for Max Kane. At his initial hearing, three years ago, his Total Guideline Range was 196 to 224 months. Since that hearing, Mr. Kane had one disciplinary infraction that was a Category 2 severity, resulting in a disciplinary guideline range of 0 to 10 months. He has not programmed regularly since his last hearing, and therefore will not receive any credit for superior program achievement. Add the Total Guideline Range from his previous hearing to his disciplinary guideline range as follows:

Total Guideline Range:	196–224 months
Disciplinary Guideline Range:	+ 0–10 months
Superior Program Achievement:	0 months
New Total Guideline Range:	**196–234 months**

VI. Revocation, Reparole and Statutory Interim Hearing Guidelines

A. Revocation and Reparole

A D.C. Code offender who is released on parole and later violates the terms of his parole may be subject to a parole revocation hearing. 28 C.F.R. § 2.98(a) (2016). If the conduct that is the basis of the parole revocation also results in a criminal conviction, the prisoner will likely serve the judicially imposed sentence for the new crime before having his parole revoked. Often, USPC issues a warrant for the parole violation when the parolee is arrested for the new offense, but lodges it as a detainer and does not execute the parole violator warrant until the prisoner has served the new criminal sentence in full. *Id.* §§ 2.98(c)(3), 2.100(c)(3). When the warrant is executed, USPC holds a parole revocation hearing to determine whether the offender should be "reparoled," (i.e., released to serve the remainder of the sentence for the instant offense in the community), or rather, should remain incarcerated on the instant offense as punishment for the parole violation. *Id.* § 2.105(b). Prisoners are often unaware of this process and do not understand that they may be required to serve additional time for the parole violation after serving a new criminal sentence for the same underlying conduct.

In making a reparole determination following a revocation hearing, USPC adheres to the guidelines set forth in 28 C.F.R. §§ 2.81(a), 2.21, and 2.20. Taking into account the offender's newly calculated SFS (based on the criminal activity constituting the parole violation), as well as the severity of the new criminal conduct (evaluated by reference to a set of criteria in 28 C.F.R. § 2.20), the regulations recommend a range of months of further incarceration that serve as the presumptively appropriate punishment for particular parole violations. § 2.20. USPC establishes a "presumptive or effective release date" pursuant to 28 C.F.R. § 2.81(a) and § 2.12(b). In setting this date, USPC relies on the guideline range generated by the formula set forth in Section 2.20, but is not bound by it. §§ 2.20(b)-(c).

B. Statutory Interim Hearings

If USPC decides *not* to reparole an offender immediately following a revocation hearing, it conducts statutory interim hearings pursuant to 28 C.F.R. § 2.14 to review whether any change in the presumptive or effective release date is warranted. 28 C.F.R. § 2.14(a)(1) (2016). The frequency of the statutory interim hearings depends on the length of the offender's original, parolable sentence for the instant offense. If the maximum term of the sentence was less than seven years, the offender is entitled to a statutory interim hearing every eighteen months. § 2.14(a)(1)(i). If the maximum term of the sentence was seven years or more, he is entitled to a statutory interim hearing every twenty-four months. § 2.14(a)(1)(ii).

A statutory interim hearing is similar to a parole hearing, but there are some important differences. First, "[t]he purpose of an interim hearing…shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing." 28 C.F.R. § 2.14(a). This means that the hearing examiner only considers relevant information since the revocation hearing or previous statutory interim hearing. Second, the remedies available to a prisoner in a statutory interim hearing are slightly different than those available at a grant of parole initial hearing or rehearing. At a statutory interim hearing, USPC has three options: (1) it can make no change to its previous decision as to when the prisoner should be released; (2) it can advance the presumptive release date, but only for superior program achievement or "other clearly exceptional circumstances"; or (3) it can "[r]etard or rescind a presumptive parole date for reason of disciplinary infractions," in which case the "the interim hearing shall be conducted in accordance with the procedures of § 2.34(c) through (f)." § 2.14(a)(2)(i)-(iii).

Example: Reparole/Statutory Interim Hearing

Tom Williams is sentenced in 1990 to fifteen to forty-five years for armed robbery. He is released on parole in 2005 after serving fifteen years, and therefore must serve thirty years on parole. In 2015, Mr. Williams is arrested for possession with intent to distribute ten grams of freebased cocaine. Mr. Williams is prosecuted in court for the drug offense and receives a determinate sentence of three years in prison. *See supra* Ch. 1 § I(A) for an explanation of the difference between determinate and indeterminate sentences. In 2018, at the conclusion of his three-year sentence, Mr. Williams expects to be released to serve the remainder of his armed robbery sentence on parole. However, USPC has issued a parole violator warrant against Mr. Williams and executes the warrant when Mr. Williams completes his three-year sentence. Following a hearing, USPC decides to revoke Mr. Williams's parole because of the drug crime. His new SFS, taking into account the drug crime as a "prior conviction," is calculated as a 4, and the offense severity rating for the parole violation, pursuant to the guidelines at 28 C.F.R. § 2.20, is Category 5. As a result, instead of immediate reparole, USPC sets a presumptive release date in sixty months (or 2023), at the top of the recommended guideline range, to serve as punishment for the parole violation. *See* 28 C.F.R. § 2.20 (2016). Because the armed robbery sentence is longer than seven years, Mr. Williams is eligible for a statutory interim hearing every twenty-four months until his release date.

VII. Informal Criteria Used in Parole Decisions

There are two "informal" criteria that can be extremely important to a parole case under all three sets of guidelines:

1. Acceptance of responsibility and expression of remorse
2. Release plan

The regulations do not expressly require prisoners to satisfy these criteria, but they are a critical, if unstated, part of every parole hearing. Indeed, it is very difficult for a prisoner to earn parole without a strong showing on both factors.

A. Acceptance of Responsibility and Expression of Remorse

USPC views acceptance of responsibility for the instant offense as a strong indicator that the prisoner will not recidivate. Typically, USPC relies on the PSR as the "official" version of the offense, *see* U.S. Dept. of Justice, U.S. Parole Comm'n Rules & Procedures Manual § 2.19-04 (2010), and full acceptance of responsibility rests on the prisoner's confirmation that the factual account in the PSR is accurate. A prisoner may dispute aspects of his PSR but, depending on the hearing examiner, if he does so, he may not be seen as accepting full responsibility for his actions. If the prisoner disputes certain facts set forth in the PSR, he may want to support his version of events with evidence. If there is any mitigating information pertaining to the instant offense, the risks and benefits of providing that information to the hearing examiner should be weighed. There is a risk that a hearing examiner may interpret the prisoner's account of the offense to be evasive or lacking acceptance of responsibility if justifications, explanations, or excuses accompany his testimony.

Furthermore, expressions of remorse for the pain caused to any victims or their families is often viewed as evidence of rehabilitation. If your client shares with you regret for his actions, or reflects on the far-reaching consequences of his offense, you should encourage him to communicate those feelings to the hearing examiner. To the extent that BOP programming has helped the prisoner accept responsibility and/or develop empathy toward any victims, the hearing examiner will find that relevant and significant as well. It is appropriate for the prisoner to show emotion at the hearing if it is heartfelt and permits an authentic expression of remorse—although a strong show of emotion is by no means necessary.

B. Release Plan

Release planning can be very important, both for the parole hearing and for the prisoner's potential to succeed upon returning to the community. Depending on the hearing examiner, more or less weight may be placed on a well-developed release plan as a predictor of successful reentry. An excellent release plan will be articulated in writing and will include a brief description of the housing, employment, and community support that await your client upon release. To formulate a release plan, you might consider taking some or all of the following steps:

1. Reach out to the prisoner's family members and friends to secure post-release housing. It is important to remember that there are restrictions on a parolee's association with convicted felons, so it may be necessary to inquire about the criminal histories of proposed household members. Your client may also be eligible for halfway housing or transitional housing upon release.
2. Contact prospective employers or friends and family members about employment opportunities. You may also want to look at employment resources available to convicted felons in the community where the prisoner intends to live post-release. In particular, you might consider how the prisoner's BOP work history and vocational training connects to future employment opportunities. For instance, if the prisoner worked in food service for fifteen years while incarcerated, employment in the catering industry may be appropriate. If you do secure an offer of employment, a letter from the employer setting forth the terms of the job can be helpful. Even a letter expressing interest in your client as a potential employee can have value.
3. Solicit letters from family members, friends, clergy, and others who are willing to support the prisoner emotionally and/or financially upon his release.
4. If applicable, state how much money the prisoner has saved in prison and indicate how it will contribute to his financial stability upon release.

It should be noted that prisoners are not legally bound to abide by the release plans they present at their grant of parole hearings.

VIII. Remedies

Understanding the various remedies USPC may order in a parole case can assist you in requesting the proper relief from the hearing examiner. This Section covers the forms of relief available to prisoners in a parole matter. It is important to remember that the hearing examiner's recommendation is not final and can be overturned by USPC upon review. *See infra* Ch. 2 § IX for a discussion of final USPC action and opportunities for appeal.

A. Parole Effective Date

USPC can grant a parole effective date up to nine months from the date of the hearing, and this is the date by which your client must be released from prison. 28 C.F.R. §§ 2.75(a)(1)(i), 2.82(a) (2016). Often, USPC sets the parole effective date at or close to the nine-month mark so that the prisoner has time to finalize his release plan, as well as get it approved by BOP and the community supervision agency in the jurisdiction to which he will be released. It should be noted that because release on parole is conditioned on good conduct between the hearing and the actual release date, USPC can rescind a parole effective date prior to the prisoner's actual release for "new and significant information concerning the prisoner, including disciplinary infractions." *Id.* §§ 2.86(a)-(b).

B. Presumptive Parole Date

As an alternative to a parole effective date, USPC can set a presumptive parole date at least ten months but no more than three years from the date of the hearing. 28 C.F.R. § 2.75(a)(1)(ii) (2016). The regulations for D.C. Code offenders do not further define a presumptive parole date, but the regulations for U.S. Code offenders state that a "presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan." *Id.* § 2.12(d). In some circumstances, a presumptive parole date may also be conditioned upon the prisoner's completion of additional BOP programming. The parameters of the "pre-release review" are further set forth in the regulations for U.S. Code offenders, and dictate that "[a]t least sixty days prior to a presumptive parole date, the case shall be reviewed on the record" to assess institutional conduct and determine whether the release date should be approved or modified. § 2.14(b).

C. Remand

USPC may remand the case for a rehearing on the next available docket for the consideration of additional information. Upon remand, a rehearing must be scheduled within 180 days of the date of the original hearing. 28 C.F.R. § 2.75(a)(1)(v).

D. Reconsideration Hearing

If a prisoner is denied parole, USPC will schedule a reconsideration hearing (or "rehearing") within five years of the date of the hearing. The length of time between one parole hearing and the next is informally known as the "set off," and your client may refer to it as a "hit." Both the 1972 Guidelines and the 1987 Guidelines include a presumption that rehearings will be scheduled one year after the Commission's last action. *See* 9 D.C.R.R. § 103 (1982); D.C. Mun. Regs., tit. 28, § 103.2 (1985). However, USPC frequently departs from this presumption and imposes a longer set off. The 2000 Guidelines mandate that rehearings be scheduled "at three years from the month of the hearing," unless the prisoner's offense resulted in the death of the victim and he is at least three years from reaching the minimum of his Total Guideline Range, in which case USPC can impose a five-year set off. 28 C.F.R. §§ 2.75(a)(1)(iv), (a)(2)(i) (2016).

Parole violators who are denied reparole are not given a set off. Instead, 28 C.F.R. § 2.81(a) states that prisoners eligible for reparole shall have interim hearings pursuant to the guidelines set forth at 28 C.F.R. § 2.14. *See supra* Ch. 2 § VI(B) for a discussion of statutory interim hearings.

PRACTICE TIP

Presenting a persuasive case for a short set off may be an important component of your advocacy at a parole hearing. If the hearing examiner denies parole because of failure to complete a specific BOP program, request that the set off only be long enough to complete the program, and consider asking USPC for assistance in ensuring access to the required program.

IX. Final USPC Action and Opportunities for Appeal

At the end of the hearing, the hearing examiner issues a verbal recommendation on the record to grant or deny parole to the prisoner. *See infra* Ch. 4 for a detailed description of the hearing process. If parole is denied, the hearing examiner also makes a recommendation on the length of the set off. 28 C.F.R. §§ 2.89, 2.23(a) (2016). The hearing examiner's decision is not final; it is reviewed and can be either approved or overturned by a USPC Commissioner.

The concurrence of the hearing examiner *and* an "Executive Hearing Examiner" must be obtained to make a recommendation to the Commissioners. 28 C.F.R. §§ 2.89, 2.23(b)-(c). In practice, the Executive Hearing Examiner does not appear at the hearing, but rather reviews the case on the record following the conclusion of the hearing. If the Executive Hearing Examiner does not concur with the hearing examiner's recommendation, the "case shall be referred to another hearing examiner . . . for another vote." § 2.23(c). If divergent votes continue to result from such a referral, the case shall be referred to additional hearing examiners until a recommendation based on the concurrence of two examiners is obtained. *Id.* A USPC Commissioner then reviews the examiners' recommendation. The final decision is issued in a "Notice of Action" (NOA) issued within 21 business days of the hearing. § 2.74(a).

PRACTICE TIP

The NOA is mailed directly to the prisoner; attorneys must request a copy from their clients or submit a FOIA request to obtain it from USPC. *See infra* Ch. 3 § III(B)(iii)(a) for an explanation of how to obtain records of prior hearings through Freedom of Information Act requests.

If parole is granted, USPC will set a parole effective date within nine months of the date of the hearing or a parole presumptive date between ten months and three years from the date of the hearing. 28 C.F.R. § 2.75(a)(1). If parole is denied, the NOA will set forth the length of the set off and indicate the date by which the prisoner's next parole hearing must take place. § 2.75(b). *See supra* Ch. 2 § VIII for a discussion of available remedies in parole matters.

Parole decisions for D.C. Code offenders are not appealable. The regulations make this explicit for prisoners heard under the 1987 and 1972 Guidelines. §§ 2.80(o)(6), (p)(8). For prisoners heard under the 2000 Guidelines, no provision regarding appeals appears in the regulations; however, in practice, USPC does not permit appeals of these decisions.

A prisoner, however, may ask UPSC to reopen his case for a reconsideration hearing "upon the receipt of new and significant information." § 2.75(e). The procedures for re-opening parole cases are discussed in 28 C.F.R. § 2.28 and the notes accompanying Section 2.28 in the USPC Rules and Procedures Manual. In practice, it is rare for USPC to agree to reopen a case once an NOA has been issued. A decision regarding the re-opening of a parole case may not be appealed. U.S. Dept. of Justice, U.S. Parole Comm'n Rules & Procedures Manual § 2.26-10 (2010).

Example: When is it proper to ask USPC to re-open a case for reconsideration?

Proper: The hearing examiner conducts the prisoner's hearing under the 2000 Guidelines, even though the instant offense occurred on January 7, 1983. Because he should have been heard under the 1972 Guidelines based on the date of his offense, this would be considered new and significant information pursuant to 28 C.F.R. § 2.28 as "an error adverse to the prisoner was made in the processing of the case." U.S. Dep't of Justice, U.S. Parole Comm'n Policies & Procedures Manual § 2.28-02(a)(1) (2010). Therefore, you should be able to ask USPC to conduct a new hearing under the correct guidelines.

Improper: The prisoner was convicted of armed robbery and aggravated assault. He contends that his co-defendant was the person who actually assaulted the victim. After the hearing, the prisoner wishes to present a letter from his sister attesting to her belief that he is not a violent person. USPC would likely decline to re-open the case to consider the sister's letter, since it is not "new and significant" information. *Id.*

CHAPTER 3
HANDLING A PAROLE CASE

I. Forming an Attorney-Client Relationship

As the attorney for a D.C. Code offender in a parole hearing, there are certain documents and forms you should execute or obtain as soon as possible after you agree to the representation. They are listed below.

A. I-24 Form

Inmates must submit a formal application to USPC to be placed on the upcoming parole docket. 28 C.F.R. § 2.71(a) (2016). The application is known as an "I-24 form," or "Notice of Hearing-Parole Application/ Representation and Disclosure Request," and the prisoner should complete it with his BOP counselor or case manager "60 days prior to the first day of the month" in which the parole hearing is scheduled. § 2.71(d). Your client should list you as his representative on the I-24, and should amend the form to include your information if it was completed before you were retained. If the attorney's name does not appear on the I-24 form, USPC may refuse to permit the attorney's appearance at the hearing.

PRACTICE TIP

The regulations indicate that a prisoner is not required to submit an I-24 form for parole hearings subsequent to the initial hearing. 28 C.F.R. § 2.71(a). However, USPC's practice is to require submission for both initial hearings and rehearings. To be on the safe side, make sure your client completes an I-24 for every parole hearing.

The I-24 form is also used to request or waive disclosure of reports and documents contained in the inmate's prison file. 28 C.F.R. §§ 2.72(b), 2.55(a). If your client requests disclosure, documents should be provided to him at least 30 days before the hearing. *Id.* § 2.72(b); U.S. Dep't of Justice, U.S. Parole Comm'n Rules & Procedures Manual §§ 2.72(b), 2.55-01(d) (2010). The scope of prehearing disclosure is limited to documents relied on by USPC in making a parole determination. U.S. Dep't of Justice, U.S. Parole Comm'n Rules & Procedures Manual §§ 2.72(b), 2.55-02(d) (2010).

PRACTICE TIP

Once your client informs you that he has submitted the I-24 form, follow up with the USPC docket coordinator to confirm receipt. If the form has not been received, USPC will not schedule the hearing.

B. DOJ-361 Form

To access a prisoner's records, you must complete the DOJ-361 release form entitled "Certification of Identity." BOP and USPC do not accept any other release. It is best to have your client execute multiple original copies of the DOJ-361 because certain agencies will require an original signature to accompany a FOIA request.

In the "Optional" section of the DOJ-361 form, list the attorney's name as the individual to whom the records should be released. If you do not complete this section, the forms will be released to the prisoner, not to the attorney. Insert your name in this section before sending the document to your client so that he does not inadvertently list his own name and delay your records request.

II. Communicating with BOP Staff and Inmates

A. Relationship Building with BOP Staff

Your primary points of contact at BOP are the prisoner's counselor and case manager. Their respective roles may differ depending on the facility, but either the counselor or the case manager will be responsible for helping you schedule prison visits and legal calls with your client.

To connect with BOP staff, call the prison's main number (listed on the prison's website), then press 0 for matters "in reference to inmates." State the inmate's name and his Federal Register number, and tell the operator that you are an attorney. You will then be transferred to the counselor or case manager. You should let BOP staff know as soon as possible that you will be representing the inmate and will need access to the facility on the hearing day.

PRACTICE TIP

Try to obtain the counselor and case manager's direct phone numbers and email addresses. The prison's main number often goes unanswered.

B. Communicating with Inmates

i. Legal Mail

To correspond with your client confidentially, you must designate your mail as "Special Mail—open only in the presence of the inmate" on the outside of the envelope. 28 C.F.R. §§ 540.18-19 (2016). BOP regulations also require that the sender of "Special Mail" be identified as an attorney on the envelope. § 540.19(b). An envelope indicating your name followed by "Attorney at Law" is generally considered sufficient.

Incoming letters marked as "Special Mail" cannot be read, although they are still subject to inspection for physical contraband. § 540.18(a). Incoming "Special Mail" can be opened for inspection by BOP staff only in the presence of the inmate. Outgoing Special Mail can be inspected only under special circumstances. § 540.18(c).

See Appendix for sample envelope for "Special Mail."

PRACTICE TIP

The envelope should be addressed to the prisoner and include his Federal Register number. Use the mailing address of the facility as listed on the BOP website, and not the physical address of the facility.

ii. Phone calls

You can communicate with inmates by telephone via "legal calls," which are unmonitored, or non-legal calls, which are monitored and placed from the prison's pay phone.

a. *Legal Calls*

Legal calls must be arranged through the inmate's BOP counselor or case manager. BOP is prohibited from monitoring "properly placed" calls to attorneys, but many facilities take the position that simply *not recording* the legal call is sufficient to satisfy the prohibition against monitoring. 28 C.F.R. § 540.102 (2016). Therefore, it is not uncommon for a prisoner to have an "unmonitored" legal call in the office of his counselor or case manager, with the staff member present and standing within earshot. While BOP policy guidance does not expressly authorize this practice, see U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5264.08 (Jan. 24, 2008), at least one unreported case arising out of a state prison held that the presence of prison staff during an attorney telephone call may be justified on the basis of "legitimate penological interests" such as safety or staff resources. *Czapiewski v. Bartow*, No. 07-cv-549-bbc, 2008 WL 5262801, at 5-6 (W.D. Wisc. Dec. 16, 2008).

PRACTICE TIP

To arrange a legal call, contact the counselor or case manager in advance. Once you have scheduled the call at a mutually agreed upon time, you will likely need to submit a formal request on attorney letterhead in order to receive formal BOP authorization. Make sure to let the counselor or case manager know how much time you think you will need for the call and clarify whether you or the prison staff member will initiate the call.

In addition, courts have upheld related restrictions on legal calls. *See, e.g., Massey v. Wheeler*, 221 F.3d 1030, 1036–37 (7th Cir. 2000) (holding that attorneys do not have the right to "unrestricted and unlimited telephone contacts" with inmates); *Bellamy v. McMickens*, 692 F. Supp. 205, 214 (S.D.N.Y. 1988) (holding that due process is not violated when a prisoner experiences delay in scheduling calls with his attorney and asserting that prisons have no constitutional obligation to provide the "best manner of access to counsel"); *Pino v. Dalsheim*, 558 F. Supp. 673, 675 (S.D.N.Y. 1983) (upholding state prison procedure limiting prisoner to two eight-minute calls per month with his attorney). BOP may not apply frequency limitations on the number of inmate telephone calls to attorneys when the inmate demonstrates that other means of communication are inadequate. 28 C.F.R. § 540.19 (2016).

PRACTICE TIP

To request a truly unmonitored legal call that takes place in a private room, you may need to contact the warden's office to make special arrangements.

b. *Non-Legal Calls*

All telephone calls that are not legal calls can be monitored and recorded by BOP. 28 C.F.R. § 540.102. Ordinarily, the prisoner must pay for the calls out of his own funds, but in limited circumstances the inmate can place a collect call. § 540.105.

iii. Legal Visits

Legal visits offer the most reliable means of confidential communication with a prisoner. BOP regulations provide that attorney visits "shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy." 28 C.F.R. § 543.13. Furthermore, BOP may not submit legal visits to "auditory supervision," meaning that BOP staff members are not permitted to record or listen to communications that take place during attorney-client visits. *Id.* An attorney may ask the warden for permission to bring a laptop or other electronic device to the legal visit if the attorney can show that "it is absolutely essential to facilitate the attorney-client relationship, and such use would not be inconsistent with the institution's maintenance of security, good order, or discipline." U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 1315.07 § 12 (Nov. 5, 1999).

Paralegals, clerks, and law students employed by an attorney are afforded the same visiting rights as licensed attorneys in accordance with the regulations set forth at 28 C.F.R. § 543.19 (2016).

a. *Requesting a Legal Visit*

To arrange a legal visit, contact the counselor or case manager in advance. 28 C.F.R. § 543.13(c) (2016). BOP facilities vary in their requirements for authorizing a legal visit, but most institutions require a background check and the submission of various BOP forms such as the BP-A0241, "Visiting Attorney Statement," and the BP-A0660, "NCIC Check." Non-attorney representatives must complete form BP-A0243, "Application to Enter Institution as a Representative." Attorney visits "ordinarily take place" during the facility's regular visiting hours, but prisons may set their own schedules. § 543.13(b). After arranging a time for the legal visit with the case manager or counselor, the prison may require that you submit a formal request on attorney letterhead to complete your request.

b. *Practice Tips for Visiting BOP Facilities*

Determine the security level of the institution. BOP institutions are classified into five different security levels: minimum, low, medium, high, and administrative. U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5100.08 (Sept. 12, 2006). Often, prisons of different security levels are located in close proximity to one another at a Federal Correctional Complex (FCC). Visiting regulations will vary based on the security level of the institution.

Read the facility-specific visiting rules. Each institution has its own set of specialized visiting rules and must make these rules available to visitors in writing. 28 C.F.R. § 540.51(e) (2016). These can usually be found on the facility's website and should be consulted prior to a legal visit.

Review entrance procedures. All visitors are required to present government-issued photo identification to gain entry into a BOP facility. § 540.51(d). Attorneys may also be required to provide a bar card. § 543.13(d). To enter the facility on the approved visiting day, there must be a "memo" authorizing your visit at the prison's

front desk. Prior to the visit, ensure that the case manager or counselor has prepared this front desk memo and circulated it to the proper personnel or your entrance to the facility will be denied.

Review inspection procedures. An attorney may typically bring pen and paper to a visit without seeking special permission. Depending on the institution, binder clips or paper clips may be confiscated. A recording device may be used only if the attorney asks permission of the warden and "states in writing in advance of the interview that the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship." § 543.13(e). Typically, you will not be permitted to bring a cell phone into any BOP facility.

An attorney's person and belongings are subject to search for contraband. § 543.13(f). This may include an electronic drug test that searches for drug particles on hands and arms. § 511.16.

Consult the dress code. Prisons often have strict dress codes. Women may be required to wear pants. Prohibited items may include jewelry, watches, or underwire bras. In most BOP facilities, khaki clothing is prohibited because khaki is the color of prison uniforms. All dress code requirements can be found on the institution's website within the visiting rules.

Confirm the prison is not on lockdown before you visit. It is not uncommon for an emergency at the prison to cause a "lockdown" of the facility and the suspension of normal rules, including visiting privileges. § 501.1(a). Lockdowns sometimes occur because of incidents inside the prison, but can also be imposed because of external circumstances, including poor weather. It is best to call the prison immediately prior to your visit to confirm normal operations, and also to confirm that the memo authorizing your visit is at the front desk.

iv. Email

Most BOP prisoners have access to an email system called TRULINCS, otherwise known as CorrLinks. To communicate with an inmate using this system, the inmate adds your email address to his "exchange list" and you then receive an email with instructions on how to accept the CorrLinks invitation. *See* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 4500.11 § 14.10(c)(3) (Apr. 9, 2015). To receive timely alerts notifying you of a new message from a prisoner, be sure to check the opt-in box to receive email notifications. If you do not check this box, you will need to sign into CorrLinks to determine whether you have a new message from a prisoner; no notification will be sent to your regular email address. As of the writing of this manual, the practice is that CorrLinks emails are saved for thirty days in the system and then deleted permanently. All emails sent or received via CorrLinks are subject to monitoring by BOP, including communications with attorneys. *Id.*

III. Investigation

Investigation in a grant of parole case should focus on the prisoner's criminal history, instant offense, prison record, and proposed release plan. This section details key documents to obtain and offers instruction on methods for obtaining them. It can be time-consuming and difficult to access prison records, making it important to initiate this process as early as possible.

A. Key Documents to Obtain

i. Presentence Investigation Report

The Presentence Investigation Report (PSI or PSR) details the prisoner's personal history and criminal conduct, and is prepared at the time of conviction to inform the sentencing decision. D.C. Super. Ct. R. Crim. P. 32(b) (2016). A new PSR is developed following every conviction, so there may be more than one in your client's records. Occasionally, the PSR is waived and none exists for a particular offense. *Id.* R. 32(b)(1)(A).

The PSR plays a crucial role in parole cases because it contains the "official" version of the instant offense, and may also contain the defendant's version of the instant offense at the time of sentencing. USPC relies heavily on the factual account in the PSR and typically assumes its accuracy. Prisoners can expect to be questioned on details contained in the PSR at the hearing. *See supra* Ch. 2 § VII(B) for a discussion of acceptance of responsibility.

ii. Sentence Monitoring Computation Data Form

The Sentence Monitoring Computation Data form provides the official computation of the prisoner's sentence. It contains the date of commitment to a BOP facility, the parole eligibility date, and other calculations related to the sentence. Keep in mind that this form computes the sentence for the period of incarceration with *BOP only*. Many D.C. Code offenders have spent substantial time in facilities run by the D.C. Department of Corrections such as Lorton, particularly prior to 2002, and the Sentence Monitoring Computation Data form may not reflect calculations from those periods. *See supra* Ch. 1 § II for a discussion of federal jurisdiction over D.C. prisoners.

Prisoners often have sentence computation questions, especially with regard to the calculation of their good time credits. Good time credits are amassed on a monthly basis for good behavior in prison and may deduct time off the minimum and/or maximum term of the sentence. For further information on the calculation of good time credits, consult the BOP sentence computation manual for D.C. Code offenders. *See* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5880.33 (July 9, 2010).

iii. Chronological Disciplinary Record and Disciplinary Hearing Officer Reports

The Chronological Disciplinary Record (CDR) provides a comprehensive disciplinary history for the prisoner's term of incarceration in the BOP. *See* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5270.09, §§ 541.7(h), 541.8(h)(5) (July 8, 2011). Disciplinary infractions occurring in prison are divided into four categories: 100 level (greatest severity); 200 level (high severity); 300 level (moderate severity); and 400 level (low severity). 28 C.F.R. § 541.3 (2016). All alleged disciplinary infractions are written up by BOP staff in incident reports and reviewed by a Unit Discipline Committee (UDC). *Id.* §§ 541.5, 541.7.

A 300 or 400 level infraction can be adjudicated by the UDC, informally resolved, or referred to the Disciplinary Hearing Officer (DHO) for further investigation. 28 C.F.R. § 541.5. If informally resolved, a record of the resolution is maintained in the inmate's prison file, but the incident report is not. § 541.5(b)(3); *see also* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5270.09 § 541.5(b)(3) (July 8, 2011).

A 100 or 200 level infraction is automatically referred to a Disciplinary Hearing Officer (DHO). 28 C.F.R. § 541.7(a)(3) (2016). The DHO conducts a hearing, at which the inmate is entitled to make a statement and present documentary evidence, and to have a staff representative present. § 541.8(d)-(f). The DHO's decision is contained in a written report, which is provided to the inmate and maintained in his prison file. § 541.8(h); U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5270.09 § 541.8(h) (July 8, 2011).

iv. Inmate Education Data Form

The Inmate Education Data form details the prisoner's education and programming achievements during his incarceration with BOP. *See* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5300.21 § 12 (Feb. 18, 2002). It includes the dates of participation and the number of hours devoted to each class or program.

PRACTICE TIP

For inmates who have had a prior parole hearing, it is particularly important to examine the NOA and Hearing Summary from the previous hearings to determine whether USPC recommended particular programming for the prisoner. If the Inmate Education Data form reveals that the recommended programming has not been pursued, your client may have a reasonable explanation for the failure to take action, such as the unavailability of the program at the prisoner's institution, or a long waitlist. If the program has been unavailable, try to obtain proof of your client's efforts to access the program.

v. Progress Report

BOP is required periodically to prepare a comprehensive report of the prisoner's institutional history, known as the Progress Report. 28 C.F.R. §§ 534.40-42 (2016). The Progress Report is typically labeled the "Inmate Skills Development Plan" in a nod to the software program BOP currently uses to prepare the report.

The Progress Report contains a summary of educational and programming achievements, disciplinary history, and personal characteristics. § 524.42. Perhaps most importantly, it contains an analysis and evaluation of the prisoner's general adjustment to institutional life by BOP staff. § 524.42(p). A new Progress Report is typically prepared within 180 days before a parole hearing. § 524.41(a); *see also* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5803.08 (Feb. 27, 2014). Apart from the

PSR, this is the single most important document to obtain in preparation for a parole hearing. It is important to be aware that the Progress Report may not always contain a complete record of the prisoner's period of incarceration, and the supplementary records referenced in this Chapter should be obtained as well.

vi. Records from Prior USPC Hearings

If the prisoner has had a prior grant of parole or revocation hearing, the following records may be helpful to obtain:

a. *Notice of Action*

The Notice of Action (NOA) is USPC's formal written decision to grant or deny parole. 28 C.F.R. § 2.74(a) (2016). The NOA includes a brief statement of reasons for the decision. *Id.* If parole is denied, the NOA will indicate the length of the set off. *See supra* Ch. 2 § IX for an explanation of final action by USPC.

b. *Hearing Summary*

A Hearing Summary is prepared by the hearing examiner following each hearing. *See* U.S. Dep't of Justice, U.S. Parole Comm'n Rules & Procedures Manual § 2.23-01(a) (2010). It provides a comprehensive summary of the hearing as well as the examiner's evaluations of the prisoner's pre- and post-incarceration conduct. Importantly, the Hearing Summary contains the examiner's recommendation on whether to grant or deny parole, which may run contrary to the final decision set forth by the NOA. Written comments by the Executive Hearing Examiner or additional hearing examiners who review the record are also contained in the Hearing Summary document. *See supra* Ch. 2 § IX for an explanation of final action by USPC.

c. *Audio Recordings*

USPC records every parole hearing and retains a copy of the audio recording. 28 C.F.R. § 2.72(e) (2016). Hearing recordings can be useful in understanding how parole hearings are conducted, how a prisoner has responded to the hearing examiner's questions, and how his case manager spoke about him during the hearing.

B. How to Obtain Documents

i. BOP Records

a. *Informal Right of Access*

Each prisoner has an Inmate Central File, also known as the "prison file," maintained by BOP. *See generally* U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5800.17 (Apr. 3, 2015). Prisoners may request to review the "disclosable" portion of their prison files by submitting a request to the BOP staff member designated by the warden. 28 C.F.R. § 513.40 (2016). Disclosable records include the Sentence Monitoring Computation Data form, the Progress Report, certain disciplinary records (depending on the nature of the investigation), and the PSR. U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5800.17(11)(c) (Apr. 3, 2015). *See supra* Ch. 3 § III(B)(iv) for an explanation of how to obtain the PSR.

Medical records are maintained in a separate "medical file." 28 C.F.R. § 513.42. Upon request, prisoners may review any laboratory report that contains only scientific testing results (i.e., drug tests, HIV testing, etc.). § 513.42(b). For medical records containing the subjective evaluations and opinions of medical staff, BOP makes a disclosure determination based on the presence of "harm" in such records. § 513.42(d).

A prisoner's right to review his disclosable prison records is strengthened in the period immediately prior to a parole hearing, and may be triggered by requesting such a review through USPC's I-24 form. § 513.41. *See supra* Ch. 3 § I(A) for an explanation of the I-24 form. Typically, BOP staff must schedule an Inmate Central File review within seven business days of the date of the request. § 513.41(b).

Within a "reasonable time after a request," BOP staff must provide an inmate with personal copies of disclosable documents. § 513.44. BOP encourages prisoners to avail themselves of the informal procedures for

PRACTICE TIP

Many prisoners maintain up-to-date copies of their prison records and can share them with you. Before contacting BOP, make sure to ascertain which records your client already has in his possession.

obtaining access to disclosable documents rather than going through the formal Freedom of Information Act (FOIA) process set forth in 28 C.F.R. §§ 513.60 through 513.68.

b. *Freedom of Information Act Requests*

Prisoners may also access BOP records through a Freedom of Information Act (FOIA) request. 28 C.F.R. §§ 513.60-68 (2016). FOIA requests should be addressed to the Director of the Federal Bureau of Prisons and sent to the central office. § 513.60. All requests must be accompanied by a client release containing an original signature, preferably the DOJ-361 form. § 513.63. *See supra* Ch. 3 § I(B) for an explanation of the DOJ-361 form.

The BOP FOIA process is opaque and a request may be subject to multiple layers of review in both the central BOP office and regional offices. It is unusual for BOP to respond to a FOIA request within twenty business days, as mandated by the federal FOIA statute. 5 U.S.C. § 552(a)(6)(A)(i) (2012).

ii. Lorton Records

Practice experience indicates that records from Lorton Reformatory are often inaccessible. The best source of information about a prisoner's time at Lorton may be the prisoner himself.

iii. USPC Records

a. *Records from Prior Hearings*

A prisoner may request records from a prior hearing by submitting a written request to USPC pursuant to 28 C.F.R. § 2.56(a). A prisoner's *representative* may request records from a prior hearing by submitting a request, along with written authorization from the prisoner. *Id.*

The regulations set forth at 28 C.F.R. §§ 2.55 and 2.56 (incorporated for D.C. Code offenders through 28 C.F.R. §§ 2.72(b) and 2.89, respectively) describe the nature of USPC's disclosure obligations. In general, if specifically requested, USPC will disclose most records from prior hearings, including the audio recording, the hearing summary, and the NOA. USPC will also disclose many of the BOP records relied upon in making prior parole decisions, including the PSR, the Sentence Computation Monitoring Computation Data form, the CDR, DHO Reports, the Inmate Education Data form, and old Progress Reports. USPC typically consults with BOP on disclosure of medical records. 28 C.F.R. §§ 2.89, 2.56(b) (2016). Only a representative can obtain a PSR through a FOIA request; a prisoner may not. *See infra* Ch. 3 § III(B)(iv).

USPC must respond to a FOIA request within twenty business days. 5 U.S.C. § 552(a)(6)(A)(i) (2012). Requests that are only for an audio recording of a prior hearing and up to two additional documents are eligible for "priority processing." 28 C.F.R. §§ 2.89, 2.56(b)(1).

PRACTICE TIP

The regulations do not specify that a written request for records take any particular form. In practice, however, USPC requires that representatives submit a formal FOIA request along with a DOJ-361 form indicating the prisoner's consent that records be released.

PRACTICE TIP

If a prisoner has had a prior parole hearing, submitting a FOIA request to USPC is often the fastest and easiest method for obtaining documents relevant to an upcoming hearing, particularly the PSR.

b. *The Parole "Mini-File"*

In advance of an upcoming parole hearing, BOP prepares a "mini-file" for submission to USPC. U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 5800.17(11) (Apr. 3, 2015). The contents of the mini-file include sentencing, discipline, programming, and release planning information about the prisoner. *Id.* A prisoner has the right to review the "source" documents in his mini-file prior to a parole hearing, but does not have the right to review USPC's "distillations" of those documents. For instance, prisoners may not access USPC's "prehearing assessment," a document in which USPC summarizes and evaluates a prisoner's record just prior to his parole hearing. 28 C.F.R. §§ 2.72(b), 2.55(b) (2016); *see also* U.S. Dep't of Justice, U.S. Parole Comm'n Rules & Procedures Manual § 2.55-02(d).

PRACTICE TIP

USPC often receives the BOP mini-file only one or two weeks before an upcoming hearing, making it difficult to access the mini-file by FOIA request to USPC. The best method for accessing the mini-file or other prison records developed since the last hearing (if there was one) is through BOP directly. 28 C.F.R. §§ 2.72(b), 2.55(a)(1).

iv. The Presentence Investigation Report

An inmate may review his PSR(s), but *may not possess a copy*. U.S. Dep't of Justice, Bureau of Prisons Program Statement No. 1351.05 §12(a)(2)(d)(1) (Mar. 9, 2016). The prohibition on possessing the PSR relates to the inmate's security, as sensitive details such as HIV status or cooperation with the government may be contained in the document. *Id.* The PSR is typically held in the disclosable portion of the Inmate Central File and a prisoner must be provided with "reasonable opportunities" to review it. *Id.*

PRACTICE TIP

If there is not enough time to submit a FOIA request, ask your client whether family members or friends have a copy of his PSR. As an alternative, ask your client to review his PSR and record relevant details to share with you.

A prisoner's *representative* has the right to obtain a copy of the PSR on behalf of the prisoner. 28 C.F.R. § 2.55(a)(3) (2016); *United States Department of Justice v. Julian*, 486 U.S. 1, 10 (1988). To exercise this right, submit a FOIA request to BOP (if this is an initial hearing) or USPC (if a prior hearing has been held).

CHAPTER 4:
THE PAROLE HEARING

I. Pre-Hearing Submissions

The prisoner, his family, and his representative, have the option of submitting information relevant to the parole determination prior to the hearing. 28 C.F.R. § 2.72(d) (2016). USPC mandates that materials be submitted thirty days prior to the hearing. *Id.* In practice, however, USPC has rarely enforced this provision and will typically consider documents submitted much closer to the hearing date.

Pre-hearing submissions may include letters of support, release planning documents, attorney statements or arguments, or any other document relevant to the parole decision. Currently, USPC asks that pre-hearing submissions be emailed to bop.docket@usdoj.gov. However, it is highly recommended that you contact the USPC docket coordinator to determine the preferred method for submission, as internal policies tend to change quite frequently. You should also bring copies of all documents to the hearing in addition to submitting them in advance.

PRACTICE TIP

A prisoner may have asked family members or friends to submit letters or documents to USPC before he obtained legal representation; if so, you should attempt to obtain and review these documents. In addition, do not assume that USPC has received submitted documents. If the proper submission procedures are not followed, letters from family and friends often do not make it into the prisoner's parole file.

II. The Hearing

At a parole hearing, the hearing examiner controls all questioning. The attorney's only role is to provide a closing statement, and to correct the record when necessary. 28 C.F.R. § 2.13(b) (2016). Opening statements, direct examinations, and cross examinations are not allowable under the regulations, although some hearing examiners will permit an attorney to use these forms of advocacy at the hearing.

A. Date of Hearing

Every year, USPC publishes the parole docket for each facility on the Department of Justice website: https://www.justice.gov/uspc/docketing-schedule. The docket lists the week of the hearing but not the exact date. Typically, USPC does not release the exact date of the hearing until approximately two weeks in advance. You can contact the docket coordinator for updates on the precise date of the hearing. Be aware that, while USPC sets the date of the hearing, BOP determines the order of hearings on the docket day, so you should contact BOP staff if you have a preference for when your case is called.

B. Identity of the Hearing Examiner

It is USPC's policy not to release the identity of the hearing examiner in advance of the hearing.

C. Video and In-Person Hearings

USPC conducts hearings both in person and by video.[5] 28 C.F.R. §§ 2.89, 2.25 (2016). You can determine the nature of your hearing in advance by consulting USPC's parole docket on the DOJ website. At a video hearing, only the hearing examiner's location is remote; USPC requires the prisoner and his representative to be physically present at the prison in order to participate in the hearing. Hearings are typically conducted in one of the small private visiting rooms at the prison and can last anywhere from twenty minutes to one hour or more.

5. It should be noted that the Sixth Circuit has disallowed hearings by videoconference for federal offenders who are eligible for parole. *Terrell v. U.S.*, 564 F.3d 442 (2009). In *Terrell*, the court held that the statutory language entitling the prisoner to "appear" at a parole hearing must be construed to require an in-person hearing. *Id.* at 452-454. It is unlikely that the *Terrell* court's reasoning would be extended to D.C. Code offenders because no language regarding the prisoner's "appearance" at the hearing is contained in the governing statute. *See* D.C. Code § 24-404(a) (2013).

D. Order of Docket

To determine the date, time, and order of the docket, consult with USPC's docket coordinator. There may be flexibility to ensure that prisoners with attorneys are heard first on the docket, especially if arranged in advance. This can be important since dockets may involve as many as eight or nine hearings and can result in a substantial wait. Hearing examiners and BOP staff will typically accommodate an attorney's request to meet with a prisoner just prior to a parole hearing.

PRACTICE TIP

If you need time with your client immediately prior to the hearing, ask BOP staff or the hearing examiner that your client not be heard first on the docket.

E. "One Representative" Rule

A prisoner may have only one representative at a parole hearing. 28 C.F.R. § 2.72(b) (2016). The "representative" may be an attorney, a family member, a clergy member, or any other individual authorized to speak on the prisoner's behalf. If the prisoner has attorney representation, some hearing examiners will exclude all other individuals from the hearing. This decision is made at the examiner's discretion.

F. Witnesses

The case manager is almost always present during a parole hearing. At the discretion of the hearing examiner, prison staff such as work supervisors or psychologists may be permitted to speak on behalf of the prisoner. *See* U.S. Dep't of Justice, U.S. Parole Comm'n Rules & Procedures Manual § 2.13-02(a) (2010). However, some examiners view testimony by prison staff as an intrusion on the "one representative" rule if the prisoner is also represented by counsel. *Id.* Outside witnesses, including family members, are typically not permitted if the prisoner has counsel, but they can submit information or request a meeting with USPC in advance of the hearing. 28 C.F.R. § 2.72(d) (2016).

PRACTICE TIP

To ensure that witness testimony is included in the official record, obtain a letter from the witness even if you expect the witness to testify at the hearing.

G. Victims and Immediate Family of Victims

The victim or, if the victim is deceased, an immediate family member of the victim, has the right to be present at the parole hearing and to offer an oral, written, or recorded statement. 28 C.F.R § 2.72(c)(1)-(2) (2016). The prisoner may be excluded from the hearing during the appearance of the victim or the victim's representative. *Id.* If new or significant information is provided by the victim, the hearing examiner must summarize the information during the hearing and give the prisoner an opportunity to respond. *Id.*

PRACTICE TIP

While not explicitly permitted by the regulations, as the prisoner's attorney, you should request to be present during the victim's testimony.

H. Hearing Examiner's Recommendation

Following the hearing, the examiner typically deliberates for several minutes and then issues a recommendation to grant or deny parole. A short statement of reasons is read into the record. *See supra* Ch. 2 § IX for an explanation of final action by USPC.

III. Notice of Action

USPC issues the final Notice of Action in a parole case within twenty-one business days. 28 C.F.R. § 2.74(a) (2016). *See supra* Ch. 2 § IX for an explanation of final action by USPC.

Appendix A:
1972 GUIDELINES

BOARD OF PAROLE

TITLE 9

PUBLISHED BY THE

D.C. OFFICE OF DOCUMENTS

MARION S. BARRY, JR.
MAYOR

DAVID A. SPLITT
DIRECTOR OF DOCUMENTS

JUNE 1982

BOARD OF PAROLE

EXPLANATION·

This Edition contains the rules and regulations constituting Title 9, D.C. Rules and Regulations (DCRR).

The text in this title is derived from the latest text of the rules and regulations, general and permanent in nature, duly promulgated on or before May, 1982. Source materials from which the text is derived are cited with the text and should be consulted to determine the effective date of any given provision.

Current regulatory material appearing in regular issues of the D. C. Register follows the numbering system used herein and serves as a supplement hereto.

TITLE 9, may be purchased from the Publications Desk of the Office of Documents, Room 19 of the District Building, between the hours of 9:00 a.m. and 4:00 p.m.

CONTENTS

CHAPTER I - BOARD OF PAROLE

PART I - GENERAL INFORMATION

CHAPTER I - BOARD OF PAROLE

PART I - GENERAL INFORMATION

100 PURPOSE OF THE BOARD
THE BOARD IS ESTABLISHED TO:

(a) Determine if and when it is in the best interest of society and the offender to release him into the community on parole, when eligible.

(b) Determine the terms and conditions of such parole.

(c) Determine, in collaboration with the Department of corrections, standards of supervision for persons on parole or mandatory release.

(d) Determine if and when to terminate a parole or mandatory release or whether to modify the terms or conditions thereof.

101 AUTHORITY

(a) Commissioner's Order No. 67-95, issued December 26, 1967, Organization Order No. 6.

(b) D.C. Code, Title 24, Sections 201 thru 209.

(c) U.S. Code, Title 18, Sections 4161 thru 4209; Sections 5001 thru 5026.

102 FUNCTIONS

(a) Sole authority to grant parole, or in the case of a committed youth offender grant conditional release, modify the terms or conditions of such parole, and determine if and when to terminate parole for all prisoners serving a sentence of six months or more or committed under the provisions of the Youth Corrections Act, if confined in a correctional institution or facility of the District

of Columbia.

(b) Responsible, in collaboration with the Department of Corrections, for establishing standards of supervision.

(c) Sole authority to issue warrants for violation of parole or mandatory release.

(d) Sole authority to determine the date of eligibility for parole in any case where the committing court specifies such eligibility shall be established by the Board of Parole (18 USC 4208(a)(2), T. 18 USC 922, 924 or T. 26 USC 5871).

(e) Sole authority to release parolees or mandatory releasees from supervision prior to the expiration of the maximum terms for which they were sentenced.

(f) Responsible for recommending to the courts where applicable, a reduction in minimum sentence.

(g) Responsible for reporting to the committing court within 60 days, findings and a recommendation for action on cases committed for observation and study under the Youth Corrections Act, 18 USC 5010(e).

(h) Responsible for consulting with and making recommendations to the Director of the Department of Corrections as to the general treatment, training and correctional policies for committed youth offenders pursuant to the Youth Corrections Act.

(i) Conducts all hearings, initial and review for all committed youth offenders.

(j) Sole authority to discharge committed youth offenders conditionallly from active supervision or unconditionally, in its discretion, after one year of supervision, thereby setting aside the conviction and directing expunging of the record, pursuant to the Youth Corrections Act.

103 CONFIDENTIALITY OF PAROLE RECORDS

To protect the committed offender released on parole against any unwarranted publicity or invasion of privacy, that may prove deleterious to his adjustment, the following principles relative to all parole records will be observed by the Board.

(a) The dates of sentence and commitment, parole eligibility date, regularly scheduled mandatory release date, or expiration date of sentence, will be revealed in individual cases upon proper inquiry by any party having a bonafide interest.

(b) In its descretion, where public interest is deemed to require it, the Board may reveal whether or not the inmate is being considered for parole or has been granted or denied parole, and if granted, what the effective release date is, or if denied, when the

case will be reconsidered.

(c) Other matters contained in parole records may be revealed at the Board's discretion only in exceptional cases.

104 RULES, AMENDMENTS, CHANGES, MODIFICATIONS

The Board of Parole will publish its rules in the District Register. The Board reserves the right to make such changes or modifications in these rules and its procedures as circumstances may from time to time require.

CHAPTER II - ADULT CASES

PART I - PAROLE: MANDATORY RELEASE

SECTIONS	1-99	Reserved
	100	Definition of Terms
	101	Consideration for Parole-Application
	102	Hearing - General
	102.1	At Institution
	102.2	At Washington Office
	103	Rehearings
	104	Eligibility
	104.1	Statutory Eligibility
	104.2	Board Determination
	104.3	Reduction in Minimum Sentence
	104.4	Early Hearings
	105	Granting Parole-Statutory
	105.1	Criteria and Factors
	105.2	Granting Parole - Forfeited Statutory Good Time
	105.3	Parole to Detainers
	105.4	Effective Release Dates
	106	Release Planning
	106.1	Elements of Release Plan
	106.2	Out of District Planning
	106.3	Travel to Establish other Residence
	105.4	Travel-Temporary
	106.5	Changes in Parole Plan
	106.6	Reconsideration of Board Decisions
	107	Mandatory Release

CHAPTER II - ADULT CASES

PART I - PAROLE: MANDATORY RELEASE

100 DEFINITION OF TERMS

(a) Board	District of Columbia Board of Parole.
(b) Parole Original Hearing	A prisoner's personal appearance before the Board or its designated examiner for parole consideration upon expiration of the minimum sentence imposed or after serving one-third of the maximum sentence imposed.
(c) Rehearing	A prisoner's personal appearance before the Board or its designated examiner for reconsideration for parole after having being denied parole at an initial hearing.
(d) Initial Hearing	A prisoner's personal appearance before the Board in cases where the Board is to establish the parole eligibility date for purposes of setting such a date.
(e) Parole	Release under supervision for the balance of the sentence remaining to be served.
(f) Mandatory Release	A prisoner having served his term or terms less good time deductions shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms imposed, less 180 days.
(g) Statutory Good Time	A deduction from the term or terms imposed at a rate prescribed by T18, Sec. 4161, USC and T24, Sec. 405 DCC for good conduct.
(h) Industrial Good Time	A deduction, over and above the allowable statutory good time from the term or terms imposed at a rate not to exceed that which is prescribed by T18, Sec. 4162 USC for prisoners actually employed in an industry or camp.
(i) Meritorious Good Time	A deduction from the term or terms imposed over and above the

		allowable statutory good time at a rate not to exceed that which is prescribed by T18, Sec. 4162, USC for prisoners performing exceptionally meritorious services or performing duties of outstanding importance in connection with institutional operations.
(j)	Conditions of Parole	Those conditions of parole promulgated by the Board to govern the conduct of all parolees and mandatory releasees under supervision.
(k)	Special Condition	A condition imposed for a specific individual in addition to the regular condition of parole.
(l)	Violation of Conditions of Parole	A breach of one or more of the conditions of parole established by the Board, including a commission of a new and separate criminal offense.
(m)	Technical Violation of	A breach of one or more of the conditions of parole established by the Board.
(n)	Preliminary Interview	An interview conducted by the Board's Examiner to advise an alleged violator of his procedural rights and also for the purpose of gathering facts and information concerning a releasee's alleged violation(s) of the conditions of his parole.
(o)	Revocation Hearing	A hearing conducted by the Board to permit an alleged violator, his attorney and/or witnesses if he elected such representation, to respond to charges of violation of any condition of parole did occur and take further action in keeping with the overall circumstances.

101 CONSIDERATION FOR PAROLE - APPLICATION

Except in the case of offenders committed under the Youth Corrections Act, all prisoners upon approaching eligibility for parole consideration will be asked by Department of Corrections personnel to execute a form either applying for or declining consideration for parole.

Should an individual decline to execute this form, noting either application or waiver of consideration, he will thereupon be scheduled to appear before the Board or its designated examiner, for purposes of being advised as to his eligibility rights pursuant to the statute.

An individual who has filed a waiver will have the option of submitting an application at a later date.

In those cases where an individual has been committed under the provisions of 18 USC 4208(a)(2) and 18 USC 922, 924 or 26 USC 5871, making the Board responsible for the establishment of the parole eligibility date, 60 days after commitment, and upon completion of a classification study, he shall be permitted to file an application to appear before the Board for an initial hearing, for purposes of setting a parole eligibility date.

102 HEARINGS - GENERAL

Those individuals eligible for parole consideration will appear in person for a hearing before the Board, a Member, or an Examiner. They will not be accompanied by counsel nor any relative, friend or other outside person. Hearings are not open to the public.

Attorney, family, relatives, friends or any other interested persons desiring to submit information pertinent to any case may do so by forwarding letters or memoranda to the Board's offices in Washington, D. C. They may also make arrangements to appear at Board headquarters in person to discuss any case in which they have an interest.

All records and transcripts of parole hearings are confidential and will not be available or open to the prisoner, his attorney, family or any other unauthorized person.

102.1 Hearings at Institutions

Regular hearings will be scheduled for each Department of Corrections Institution and they will ordinarily be held during regular working hours of the institutions, Monday through Fridays, exclusive of holidays.

The Board will schedule special hearing dates at these institutions as it deems necessary.

102.2 Hearings at Washington Office

The Board may conduct parole hearings in its Washington headquarters from time to time. The same procedures governing institutional parole hearings will be followed for all hearings held at the Board's Offices.

103 REHEARINGS

All prisoners serving a maximum sentence of less than five years who were denied parole at their original parole hearing will ordinarily be granted a rehearing no later than six months after the Board's last action.

Prisoners serving a maximum sentence of five years or more who were denied parole at their original hearing ordinarily will receive a rehearing one year after the last action taken by the Board.

Rehearings will be afforded parole and mandatory release violators whose status was revoked by Board action. In considering where in a range to order a rehearing scheduled the Board may consider mitigating and aggravating factors of the violations which may include the nature of a new offense (property crime, crime of violence against person, or victimless crimes), the length of time on parole, and the overall adjustment on parole.

103.1 Such rehearings for a violator who has less han five (5) years remaining to be served and whose release was revoked solely on the basis of technical violations of the conditions of release will ordinarily be held six (6) months from the last Board action.

103.2 Such rehearing for a violator who has less than five (5) years remaining to be served and whose release was revoked on the basis of a new misdemeanor conviction or a new misdemeanor conviction and technical violations will ordinarily be held from six (6) to nine (9) months from the last Board action.

103.3 Such rehearings for a violator who has less than five (5) years remaining to be served and whose release was revoked on the basis of a new felony conviction or a new felony conviction and other violations of release will ordinarily be held from nine (9) to fifteen (15) months from the last Board action.

103.4 Such rehearings for a violator who has five (5) or more years remaining to be served and whose release was revoked solely on the basis of technical violations will ordinarily be held from six (6) to nine (9) months from the last Board action.

103.5 Such rehearings for a violator who has five (5) or more years remaining to be served and whose release was revoked on the basis of a new misdemeanor conviction or a new misdemeanor conviction and technical violations will ordinarily be held from nine (9) to fifteen (15) months form the last Board action.

103.6 Such rehearings for a violator who has five (5) or more years remaining to be served and whose release was revoked on the basis of a new felony conviction or a new felony conviction and other violations of release will ordinarily be held from fifteen (15) to twenty-four (24) months from the last Board action.

103.7 In all cases of rehearings, the Board reserves the right to establish a rehearing date at any time it feels such would be proper, regardless of the length of sentence involved or the time remaining to be served.

§103 amended by rulemaking,
29 DCR 1322
3-26-82

104 PRISONERS ELIGIBLE FOR PAROLE

104.1 Eligible by Statute

Title 24, section 204, D.C. Code authorizes the Board to release a prisoner on parole in its discretion after he has served the minimum term or terms of the sentence imposed or after he has served one-third of the term or terms for which he was sentenced as the case may be if:

(a) He has observed substantially the rules of the institution.

(b) There is reasonable probability that he will live and remain at liberty without violating the law.

(c) In the opinion of the Board, such release is not incompatible with the welfare of society.

104.2 Board Determination of Eligibility

Where the Court does not fix a minimum sentence, it may fix the maximum sentence of imprisonment to be served and may specify that the prisoner may become eligible for parole at such time the Board of Parole may determine. (18 USC 4208(a)(2), 18 USC 922, 924 or 26 USC 5821.

The Board, upon receipt of Classification and Evaluation material, to be received after 60 days will conduct an initial hearing for such prisoners. At this initial hearing the Board will establish a parole eligibility date and may:

(a) Grant parole, on or after such established date.

(b) Deny parole.

(c) Continue the case to the established eligibility date. (Ordinarily, the Board will not establish a parole eligibility date that will exceed one-third of the maximum sentence imposed.

104.3 Reduction in Mimimum Sentence

Applications for a reduction in minimum sentence will be accepted and considered by the Board, provided that the prisoners submitting such applications have served three or more years of the prescribed portion of their sentence. If an application for reduction in minimum sentence is denied by the Board, there will be a waiting period of two years before the Board will again consider such application unless there are exceptional circumstances. Approval of an application for a reduction in minimum sentence pursuant to D.C. Code 24-201c requires the consent of all current Board members.

§140.3 amended by rulemaking:
28 DCR 4961
11-20-81

104.4 Hearings Prior to the Expiration of Minimum Sentence

The Board will permit an individual serving a sentence in which the minimum term is or exceeds three years to file an application for parole six months prior to his actual eligibility date. It will then conduct a parole hearing in such cases. If parole is granted, it shall not become effective until on or after the individual has actually completed service of his minimum term and is eligible for release on parole.

105 GRANTING PAROLE - GENERAL

The granting of a parole is neither a constitutional or statutory requirement, and release to parole supervision by the Board action is not mandatory.

The statutory criteria for parole notes that:

> ...Whenever it shall appear to the Board of Parole that there is a reasonable probability that a prisoner will live and remain at liberty without violating the law, that his release is not incompatible with the welfare of society, and that he has served the minimum sentence imposed or the prescribed portion of his sentence as the case may be, the Board may authorize his release on parole upon such terms and conditions as the Board shall from time to time prescribe...

All Board decisions will be made by a majority of the Members.

105.1 Factors Considered

Among others, the Board takes into account some of the following factors in making its determination as to parole:

(a) The offense, noting the nature of the violation, mitigating or aggravating circumstances and the activities and adjustment of the offender following arrest if on bond or in the community under any presentence type arrangement.

(b) Prior history of criminality noting the nature and pattern of any prior offenses as they may relate to the current circumstances.

(c) Personal and social history of the offender, including such factors as his family situation, educational development, socialization, marital history, employment history, use of leisure time and prior military experience, if any.

(d) Physical and emotional health and/or problems which may have played a role in the individual's socialization process, and efforts made to overcome any such problems.

(e) Institutional experience, including information as to the offender's overall general adjustment, his ability to handle interpersonal relationships, his behavior responses, his planning for himself, setting meaningful goals in areas of academic schooling, vocational education or training, involvements in self-improvement activity and therapy and his utilization of available resources to overcome recognized problems. Achievements in accomplishing goals and efforts put forth in any involvements in established programs to overcome problems are carefully evaluated.

(f) Community resources available to assist the offender with regard to his needs and problems, which will supplement treatment and training programs begun in the institution, and be available to assist the offender to further serve in his efforts to reintegrate himself back into the community and within his family unit as a productive useful individual.

105.2 Granting Parole in Relation to Loss and Restoration of Good Time

In general, the Board will not grant parole unless the prisoner has substantially observed the rules of the institution in which he is confined.

Since the forfeiture of good time indicates that the prisoner has violated the rules of the institution to such a serious degree and that he may lack the emotional controls necessary for making a satisfactory adjustment in the community, parole may not be granted where such forfeiture remains on the record.

In exceptional cases, where it appears on the whole record, parole may be granted notwithstanding that the forfeited good time has not been restored. In other cases, parole may be granted conditionally pending restoration of the forfeited good time.

However, in no case shall forfeited good time abridge the right of a prisoner to apply for or receive a parole hearing.

105.3 Parole to Detainer

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

(1) The status of detainers placed against prisoners in District of Columbia Correctional Institutions will be investigated so far as is reasonably possible, prior to parole hearings.

(2) The Board may grant parole to a detainer if a prisoner is in other respects considered a good parole risk.

(3) Arrangements for supervision by other jurisdiction will be made prior to issuing release certificate where the jurisdiction holding the detainer is the prisoner's intended state of residence.

(4) Alternate release plans are formulated and approved by the Board for prisoners paroled to a detainer, who, after disposition of the detainer has been made, are still accountable to the Board, and their approved place of residence is the District of Columbia.

105.4 Effective Date of Release

Where parole has been granted and an effective release date has been set, actual release on parole on that date is conditioned upon the individual maintaining a good institutional conduct record and the completion of a satisfactory approved release plan for supervision. The Board may reconsider any case prior to such actual release on its own motion and may reopen the case to either advance, or postpone, the effective release date or rescind and deny a parole previously granted.

The Board requires that it be apprised of any serious breach of the institutional rules committted by a prisoner subsequent to his being granted parole, but prior to his release. Prisoners reported for such a violation should not be released until the institution has been advised that no change has been made in the Board's order granting parole.

The Board may add to, modify and/or delete any condition of parole at anytime and upon making any such change it will be incumbent upon the parole officer to so advise the parolee.

106 RELEASE PLANNING

The details of each plan for release shall be verified by the Department of Corrections' Supervision Unit.

In those cases where parole has been granted, but release plans have not been submitted by the prisoner for investigation, supervison will assist in formulating release plans and then submit them following investigation to the Board for approval.

All grants of parole are conditional on the formulation of acceptable and suitable release plans. Release certificates will not be issued until such approval of a release plan has been given by the Board.

If all efforts to formulate and/or verify an acceptable suitable parole plan prove futile, no later than thirty days after the effective release date, such information will be submitted to the Board by detailed report.

106.1 Elements in Release Plan

The following principles will govern the formulation of a release plan for approval and eligibility:

(a) Evidence that the parolee will have an acceptable residence and will be legitimately employed immediately upon release.

(b) Under special circumstances the requirement for immediate employment upon release may be waived by the Board.

(c) Availability of and acceptance in a community program must be assured in those cases where parole has been granted conditioned upon such acceptance and/or participation in a specific community program.

(d)Assurance that necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems in which special care is necessary, such as hospital facilities or other domiciliary care.

106.2 Release to Live in State Other Than the District of Columbia

The Board, in its discretion, may, parole any individual to live and remain in a state other than the District of Columbia, provided that the authorities of the intended state of residence accept such prisoner for supervison and suitable release plans have been developed and approved by the Board.

106.3 Travel to Other Jurisdictions for the Purpose of Establishing Residency

Whenever it appears to the Board that there is a reasonable probability that a parolee could, if present in another state, obtain employment and establish an acceptable place of residence, and could reside in that state without violating the law, the Board may authorize his travel to such state without prior communications with the state authorities.

The Board will request state supervision when evidence of suitable employment and residence has been submitted by the parolee and received by the Board.

Any parolee permitted to travel to another state for the purpose of re-establishing himself as a law-abiding citizen of such state, who fails to communicate with the Board as directed, or who fails to return to the District of Columbia when ordered to do so by the Borad, will be deemed a violator of the conditions of his release and a warrant for his arrest and return will be issued by the Board.

106.4 Travel to Other Jurisdictions -- Temporary

The supervising parole officer may authorize travel to another jurisdiction to permit a releasee to attend the funeral of a deceased relative, visit a seriously ill relative or for employment purposes. Such authorization will not require prior approval of the Board, but shall not exceed thirty days, and will be given to the parolee in written form, copy of which will be sent to the Board.

Travel for vaction purposes not exceeding a weekend nor a distance of approximately 50 mile from the District of Columbia may also be approved by the parole officer without prior Board approval. Any extended vacation trips or travel exceeding the above will first be cleared by the Board for its approval.

106.5 Changes in Parole Plans

The release plan approved and accepted by the Board may be changed after release upon application to and acceptance by the Chief Parole

Officer of the Department of Corrections with the approval by the Board.

Any special conditions established by the Board will remain operative and in effect unless the Board specifically modifies or rescinds such conditions.

106.6 Reconsideration of Board Decisions

(Cross reference: Chapter II, Part I, Sec. 105.4 of this Title). The Board may reconsider any case prior to actual release on parole or where parole has been previously considered and denied, on its own motion, and may reopen and advance, postpone or deny a parolee previously granted, or grant parole to one previously denied.

107 MANDATORY RELEASE

When a prisoner has been denied parole at his original and all subsequent hearings and in those cases where the statutes specifically preclude parole consideration, such individuals shall be released at the expiration of their imposed sentence less the time deducted for any good time allowances provided by the statutes.

Any prisoner having served his term or terms less good-time deductions, shall however upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he was sentenced, less 180 days.

In keeping with this statutory requirement, any such mandatory releasee will be under the jurisdiction of the Board of Parole and subject to parole supervision.

CHAPTER II - ADULT CASES

PART II - SUPERVISION

SECTIONS 200 Supervision of Parolees and Mandatory Releasees - General

200.1 Supervision Reports

200.2 Annual Reviews

201 Release from Supervision - General

201.1 Minimum Supervision Period

201.2 Release from Supervision-Requirements

201.3 Consideration Procedure

201.4 Order of Release
Reinstatement to Supervision-Revocation Consideration

CHAPTER II. ADULT CASES

PART II - SUPERVISION OF RELEASES

200 SUPERVISION OF PAROLEES AND MANDATORY RELEASES -- GENERAL REQUIREMENTS

The Department of Corrections provides parole supervision services for all prisoners, including committed youth offenders, paroled or released on mandatory release from a correctional institution or facility of the District of Columbia.

Supervision of all prisoners under the control of the Board of Parole is vested in the Chief Parole Officer for the Department of Corrections. The Chief Parole Officer is responsible for formulating release plans for all prisoners under the jurisdiction of the Board. (Organization Order No. 7, Part IV, F, Title I, D.C. Code).

200.1 Supervision Reports

Parole Officers will submit reports on all parolees and mandatory releases whose adjustment in the community is marginal, or who may have become involved in situations that could result in a violation.

200.2 Annual Summary Review

Parole officers shall submit an annual summary review on the progress of each parolee and mandatory releasee under their supervision, who upon release has 30 months or more time to be under actual supervision.

Such reviews will be submitted to the Board during the anniversary month that the releasee comes under actual supervision.

201 RELEASE FROM SUPERVISION -- GENERAL

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

201.1 Release From Supervision -- Minimum Period of Supervision Required General

Consideration for release from parole supervision will be given, but not limited, to those parolees who are to be under supervision for a period of 30 months or more.

Consideration for release from supervision of parolees who have a parole supervision period of less than 30 months will be given only those cases where exceptional or unusual circumstances exist.

201.2 Release From Supervision -- General Requirements

Recommendations for release from supervision will not be considered for any parolee or mandatory releasee who has not been under active supervision for at least one year.

(a) Consideration for release from supervision will be exercised by the Board by an annual summary review of parole cases at the expiration of each year of parole supervision.

(b) Parole officers submit to the Board, at the expiration of each year of supervision in a parole case, a written report on the

community adjustment which the parolee has made during this period, together with a recommendation for or against his release from further parole supervision and the reasons for such a recommendation.

(c) All reports for release from parole supervision will include a signed statement from the unit supervisor of the parole officer, indicating whether he concurs with or disapproves of the recommendation of the parole officer noting his reasons for such recommendation.

201.3 Release From Supervision -- Consideration By Board

Reports concerning release from supervision shall be considered by at least two members of the Board, and a decision shall be by majority vote. No hearing shall be required for Board action on such reports.

201.4 Order of Release -- Returned To Supervision -- Revocation

(a) When the Board approves a recommendation for release from further supervision, a written order of release from supervision will be issued and signed by at least two members of the Board. A copy of the order shall be delivered to the release.

(b) The order of release shall state that the conditions of the releasee's parole are waived, except the condition that he violates no law or engage in any conduct which might bring discredit to the parole system, under penalty of possible revocation of parole or of the order of release.

(c) The order of release from supervision in no way releases the parolee from the custody of the Attorney General or the jurisdiction of the Board before the maximum date of the term or terms imposed, or, in the case of mandatory releasees, the maximum date of the term or terms imposed, less one-hundred eight (180) days, nor does it relieve him of the responsibility to live a law-abiding and reputable life.

(d) If, after an order of release from supervision has been issued by the Board, but prior to the expiration of the sentence(s) imposed or, in the case of a mandatory release, the expiration date of the maximum period of supervision, the parolee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Board, may, in its discretion, issue a warrant for the parolee' return to custody as a violator, rescind the order of release from supervision and return the parolee to active supervision, or impose any special conditions to the order of release from supervision.

CHAPTER II

PART III- VIOLATION AND REVOCATION

CHAPTER II - ADULT CASES

300 WARRANTS

A Warrant for the detaining or the retaking of any person under the jurisdiction of the District of Columbia Board of Parole may be issued only by the Board or a Member of the Board.

In cases of parolees, such a violator warrant may be issued any time up until the maximum term of the parolees sentence. In the cases of mandatory releasees, who are under supervision as if on parole, such action can be forthcoming up until the expiration date of the maximum term, less 180 days.

300.1 Basis For Issuance of Warrants

Upon receipt of information that a parolee or mandatory releasee under jurisdiction of the Board has been accused of committing a crime, implicated in criminal activity, or has violated any other condition of parole, such information along with a detailed report as to the parolees overall adjustment while under supervision will be brought to the attention of the Board or a Member thereof.

The Board or any Member will then give due deliberation to all the pertinent information and to the circumstances, considering such factors, among others, as:

(a) Seriousness of the charges preferred.

(b) Overall adjustment of the parolee under supervision.

(c) The potential risks and danger to the community should the parolee be permitted to continue in the community under supervision.

In order to determine if a warrant should be issued, of paramount concern will be the matter of the protection of the community.

300.2 Disposition of Issued Warrant.

Should the Board issue a violator warrant, it will at that time direct what action will be taken as concerns disposition of the warrant.

The Board can order:

(a) That the warrant be served and executed, so that the alleged violator is taken into custody on the warrant.

(b) That the warrant be placed as a detainer against the alleged violator if he is in custody on a new pending charge.

(c) That the warrant be served and thus executed if the alleged violator is in custody serving a new sentence.

(d) That the warrant be placed as a detainer against the alleged violator if he is in custody serving a new sentence, to be executed upon release from same.

The Board reserves the option of recalling a warrant it has issued prior to execution of that warrant. It can then either hold further disposition in abeyance, rescind the warrant or take what further appropriate action it feels should be forthcoming.

300.3 Officers Authorized To Execute Warrants

Any authorized officer of the District of Columbia Department of Corrections, Member of the District of Columbia Metropolitan Police Department or any Federal Officer authorized to serve criminal process within the United States to whom a warrant for the retaking of a parole or mandatory release violator is delivered, shall in keeping with instructions of the Board, act on such warrant by placing a detainer or executing such warrant and taking such prisoner and returning or removing him to the District of Columbia from which he was paroled or mandatorily released or to such place of confinement as may be designated by the Attorney General of the United States.

301 REVOCATION PROCEDURE - GENERAL

Any individual retaken upon a warrant issued by the Board of Parole will be given an opportunity to appear before the Board, a member thereof, or an examiner. After such appearance, should the Board find it to be a fact that one or more of the conditions of parole or mandatory release were violated, the Board will record such finding and may then, or at anytime in its discretion, order the revocation of parole or mandatory release.

A finding of violation does not imply an automatic revocation nor need it result in an order of revocation of parole or mandatory release.

Rather, prior to implementing an order of revocation, the Board in its deliberations will give consideration to those alternative actions that may be available to it. Such alternatives may include, among others, reinstatement to supervision either to a plan or some community based facility, revocation to be followed by a reparole either to a plan or through a community based treatment facility, or continuation for further investigation for more specific information.

In its deliberations, the Board will give due consideration to the protection and safety of the community, as well as to the needs of the violator and resources available to assist the violator with regard to his circumstances.

If a finding that one or more of the conditions of parole or mandatory release is not or cannot be substantiated, the Board will so note, and will direct the alleged violator be reinstated to parole or mandatory release status that existed prior to his coming into custody of the violator warrant.

In revocation hearings where the sole basis for the revocation process rests upon all alleged law violation that is before the court of competent jurisdiction but has not been adjudicated, it shall be the general policy of the Board to continue such cases without a final decion on revocation of parole, pending the court's decision with reference to the pending charge.

Where there is overwhelming and compelling evidence that the parolee is guilty of the alleged law violation (as, for instance, a signed or stated admission on the record), the Board may, at its discretion, elect to make a finding as such and to revoke parole without a finding by the court of jurisdiction with reference to the charge.

If the Board elects not to revoke but to continue the case pending a Court disposition with reference to the charge, the Board shall have the option with reference to custody status of either reinstating the parolee to a parole status pending a disposition of the charge or of continuing the parolee in physical custody on the Board warrant, depending on the circumstances of the case.

If, based upon the evidence developed at the revocation hearing, it is determined by the Board that (1) there is a strong likelihood that the parolee is guilty of the alleged law violation and that (2) based on the parolee's current and past criminal record and adjustment on parole, the parolee is apt to represent a danger to the community or to any adversary witness, it shall be the responsibility and duty of the Board to exercise its option to retain the parolee in custody pending a final disposition of the law violation charge.

If, as a result of the revocation hearing the Board has questions as to the strength of the government's law violation charge and if there are no compelling reasons for retaining the parolee in custody, the Board may exercise its option of reinstating the parolee to parole pending the disposition of the charge.

§301 amended by rulemaking
28 DCR 17
4-24-81

302 PRELIMINARY INTERVIEWS - D.C.

The Board will provide an alleged parole or mandatory release violator who has been taken into custody on its violator warrant a preliminary interview conducted either by the Board, a member or an Examiner. The purpose of such preliminary interview will be to advise the alleged violator as to his procedural right to have an attorney represent him and/or to present voluntary witnesses, having pertinent information relevant to the charge or charges, appear with and for him at a revocation hearing.

If there is an election for attorney representation and/or witnesses, the case will then be scheduled for a revocation hearing to be conducted by the Board. The alleged violator will be given the opportunity to contact his attorney and/or witnesses in order to arrange for their presence, but will be expected to complete such arrangements within 30 days. Should a longer delay be necessary, it will be discretionary with the Board upon request of the alleged violator.

If the alleged violator waives his procedural right to attorney representation and/or witnesses, then the preliminary interview will encompass a full review of the alleged violations charged. The alleged violator will be given the opportunity to respond to these charges and a report will be submitted containing a digest or summary of such review. The Board may then proceed to take action based on the report of the preliminary interview and the finding and recommendation of the Examiner without the necessity of conducting any subsequent revocation hearing.

302.1 Preliminary Interview - Areas other than D.C.

Those parolees or mandatory releasees who have been permitted to travel to or reside elsewhere, other than the District of Columbia, upon coming into custody as an alleged violator, based on Board action, will be afforded a preliminary interview within a reasonable period of time in the jurisdiction in which the alleged violation(s) reportedly occurred.

The Board may request that such preliminary interview be conducted by the paroling authorities of the other jurisdiction, or will seek the assistance of the U.S. Probation Officer of that jurisdiction, or some other competent authority. It will submit an order designating the requested authority to act for and on its behalf as a special examiner in the case in question, advising as to the necessary procedure.

Should the alleged violator waive attorney and/or witnesses, the designated examiner will then conduct the preliminary interview to encompass a full review of the alleged violations charged, giving the violator the opportunity to fully explain his circumstances. A report containing a digest and summary, along with findings and recommendation will be submitted to the Board.

If an attorney and/or witnesses are desired by the alleged violator, the examiner will provide an opportunity to permit their appearance and will then conduct the interview, submitting his report to the Board for evaluation, review and further action.

Should the Board direct that the alleged violator be returned to the District of Columbia, it may upon such return, schedule the case for a subsequent revocation hearing.

303 REVOCATION HEARINGS

Subsequent to a preliminary interview, the Board may direct that an alleged violator be scheduled to appear at a revocation hearing. At such hearing the alleged violator may be represented by counsel and/or have witnesses present having information to present of a pertinent nature bearing on his circumstances of violation.

When attorney and/or witnesses are present, the actual hearing will be held at a place convenient to both Board and attorney. Otherwise, the hearings may be held at the institution to which the alleged violator has been returned to by the Department of Corrections.

A transcript of the hearing will be made, but only the Board's summary will be transcribed and this will contain among other matters, a finding by the Board as to whether one or more violations had in fact occurred.

Any decision as to the finding and subsequent Board action taken will be by majority vote of the Board.

303.1 Appointment of Counsel

There are no statutory provisions authorizing the Board to appoint any attorney to represent alleged violators at a revocation hearing. Counsel will have to be secured at the expense of the alleged violator. Should the alleged violator lack necessary financial ability to retain counsel, he will be advised as to what resources are available that he can call upon in order to arrange for and obtain legal assistance.

However, neither the Board not its staff will initiate action or make any arrangement to obtain legal represenation for the alleged violator.

303.2 Witnesses

The Board cannot secure witnesses to appear on behalf of any alleged violator, in that it has no subpeona power nor can it provide the expense for such appearance. Witnesses will have to be secured by the alleged violator (or his attorney), at his expense and will have to appear voluntarily.

303.3 Sworn Testimony

Neither the alleged violator nor his witnesses will be placed under oath or asked to submit to the taking of any oath. The Board expects that any information presented to it for its consideration will be entirely factual and completedly truthful.

304 SERVICE OF VIOLATION TIME

Should the Board's order that parole or mandatory release be revoked and terminated, the prisoner, unless subsequently reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him after his return to custody. The time a prisoner was on parole or mandatory release shall not be taken into account to diminish the time for which he was sentenced. (T24, Sec. 206, D.C.C.) (Gould v. Green /_1944, 141 F 2d 533, 78 U.S. App. D.C. 363_/).

304.1 Rehearings

See Chapter II, Part I, Section 103.

305 Detainer Reviews

Where a warrant issued by the Board is placed as a detainer, the Board will arrange for a review of the overall circumstances of the case, either following a dispositional interview if the alleged violator is in local custody or a review of the record by staff if he is confined elsewhere.

Should the Board direct the detainer based on its violator warrant remain on file, subsequent dispositional reviews will be held on an annual basis. The Board may upon its on action or a petition from other sources give earlier consideration to the status of a detainer.

Following such dispositional reviews, either upon interview with the Board or its Examiner or a record review, the Board may:

(a) let the detainer stand

(b) execute the warrant, and schedule a revocation hearing

(c) order the warrant withdrawn and thus the removal of the detainer

(d) continue the case pending receipt of further information

Any decision as concerns disposition of a detainer will be by majority vote of the Board. The Board retains the option of conducting a dispositional interview with the prisoner at the place of his confinement before taking any action. If such dispositional interview is conducted, the Board will permit the presence of attorney and/or witnesses, if they are desired, under the same conditions as exist with reference to revocation hearings.

Appendix B:
1987 GUIDELINES

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS

TITLE 28

CORRECTIONS, COURTS, AND CRIMINAL JUSTICE

TABLE OF CONTENTS

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 2 PAROLE OF ADULT PRISONERS

(Continued)

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 5 CORRECTIONAL INSTITUTIONS - DISCIPLINARY ACTIONS

518 - 519: RESERVED

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 10 CRIMINAL JUSTICE SUPERVISORY BOARD

DCMR TITLE 28 CORRECTIONS AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 11 JUVENILE JUSTICE ADVISORY GROUP

DCMR TITLE 28 CORRECTIONS AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 20 JUDICIAL DISABILITIES AND TENURE

(Continued)

DCMR TITLE 28 CORRECTIONS, COURTS, AND CRIMINAL JUSTICE TABLE OF CONTENTS

CHAPTER 23 CRIME VICTIMS COMPENSATION PROGRAM

(Continued)

CHAPTER 1 BOARD OF PAROLE

100 AUTHORITY AND FUNCTIONS OF THE BOARD OF PAROLE

100.1 The Board of Parole (also referred to in chapters 1 through 4 of this title as "the Board"), as established under D.C. Code, §24-201(a), 1981 ed., shall exercise its authority in accordance with the provisions of Commissioner's Order No. 67-95, issued December 26, 1967 (Organization Order No. 6), as amended; D.C. Code, 24-201 et seq., and Title 18 of the U.S. Code, §§4161 through 4209 and §§5001 through 5026.

100.2 The Board shall have sole authority to grant parole, or in the case of a committed youth offender grant conditional release, modify the terms or conditions of parole, and determine if and when to terminate parole for all prisoners serving a sentence of six (6) months or more or committed under the provisions of the Youth Corrections Act, if confined in a correctional institution or facility of the District of Columbia.

100.3 The Board shall be responsible, in collaboration with the Department of Corrections, for establishing standards of supervision.

100.4 The Board shall have sole authority to issue warrants for violation of parole or mandatory release.

100.5 The Board shall have sole authority to determine the date of eligibility for parole in any case where the committing court specifies such eligibility shall be established by the Board of Parole in accordance with 18 USC 4208(a)(2), 18 USC 922, 924, or 26 USC 5871.

100.6 The Board shall have sole authority to release parolees or mandatory releasees from supervision prior to the expiration of the maximum terms for which they were sentenced.

100.7 The Board shall have sole authority to discharge committed youth offenders conditionallly from active supervision or unconditionally, in its discretion, after one year of supervision, thereby setting aside the conviction and directing expunging of the record, pursuant to the Youth Corrections Act.

100.8 The Board shall be responsible for recommending to the courts where applicable, a reduction in minimum sentence.

100 AUTHORITY AND FUNCTIONS OF THE BOARD OF PAROLE (Continued)

100.9 The Board shall be responsible for reporting to the committing court within sixty (60) days, findings and a recommendation for action on cases committed for observation and study under the Youth Corrections Act (18 USC 5010(e)).

100.10 The Board shall be responsible for consulting with and making recommendations to the Director of the Department of Corrections as to the general treatment, training and correctional policies for committed youth offenders pursuant to the Youth Corrections Act.

100.11 The Board shall conduct all initial and review hearings for all committed youth offenders.

101 CONFIDENTIALITY OF PAROLE RECORDS

101.1 To protect the committed offender released on parole against any unwarranted publicity or invasion of privacy which may prove deleterious to his or her adjustment, the principles set forth in this section relative to parole records shall be observed by the Board.

101.2 The dates of sentence and commitment, parole eligibility date, regularly scheduled mandatory release date, or expiration date of sentence, shall be revealed in individual cases upon proper inquiry by any party having a bonafide interest.

101.3 In its discretion, where public interest is deemed to require it, the Board may reveal whether or not the inmate is being considered for parole or has been granted or denied parole, and if granted, what the effective release date is, or if denied, when the case will be reconsidered.

101.4 Other matters contained in parole records may be revealed at the Board's discretion only in exceptional cases.

102 APPLICATION FOR PAROLE

102.1 Except in the case of offenders committed under the Youth Corrections Act, each prisoner, upon approaching eligibility for parole consideration, shall be asked by Department of Corrections personnel to execute a form either applying for or declining consideration for parole.

102.2 If an individual declines to execute the form indicating application for or waiver of consideration, that person shall be scheduled to appear before the Board or its designated examiner, for purposes of being advised as to his or her eligibility rights under the statute.

102 APPLICATION FOR PAROLE (Continued)

102.3 An individual who has filed a waiver shall have the option of submitting an application at a later date.

102.4 In those cases where an individual has been committed under the provisions of 18 USC 4208(a)(2) and 18 USC 922, 924 or 26 USC 5871, making the Board responsible for the establishment of the parole eligibility date, sixty (60) days after commitment and upon completion of a classification study, the individual shall be permitted to file an application to appear before the Board for an initial hearing for purposes of setting a parole eligibility date.

103 HEARINGS BEFORE THE BOARD

103.1 Each individual eligible for parole consideration shall appear in person for a hearing before the Board, a member of the Board, or an examiner.

103.2 Each person appearing at a parole hearing shall not be accompanied by counsel nor any relative, friend, or other outside person.

103.3 Hearings shall not be open to the public.

103.4 Attorneys, family members, relatives, friends, or other interested persons desiring to submit information pertinent to any case may do so by forwarding letters or memoranda to the offices of the Board. These persons may also make arrangements to appear at Board headquarters in person to discuss any case in which they have an interest.

103.5 All records and transcripts of parole hearings shall be confidential and shall not be available or open to the prisoner, the prisoner's attorney or family, or any other unauthorized person.

103.6 Regular hearings shall be scheduled for each Department of Corrections institution. These hearings shall ordinarily be held during regular working hours of the institutions, Monday through Friday, exclusive of holidays.

103.7 The Board may schedule special hearing dates at these institutions as it deems necessary.

103.8 The Board may conduct parole hearings in its D.C. headquarters from time to time. The same procedures governing institutional parole hearings shall be followed for all hearings held at the Board's offices.

103 REHEARINGS

103.1 A prisoner serving a maximum sentence of less than five (5) years who was denied parole at his or her original parole hearing ordinarily shall be granted a rehearing no later than six (6) months after the Board's last action.

103.2 A prisoner serving a maximum sentence of five (5) years or more who was denied parole at the original hearing ordinarily shall receive a rehearing one (1) year after the last action taken by the Board.

103.3 Rehearings shall be afforded to parole and mandatory release violators whose status was revoked by Board action. In considering where in a range to order a rehearing scheduled, the Board may consider mitigating and aggravating factors of the violations, which may include the nature of a new offense (property crime, crime of violence against person, or victimless crimes), the length of time on parole, and the overall adjustment on parole.

103.4 Rehearings for a violator who has less than five (5) years remaining to be served and whose release was revoked solely on the basis of technical violations of the conditions of release shall ordinarily be held six (6) months from the last Board action.

103.5 The rehearing for a violator who has less than five (5) years remaining to be served and whose release was revoked on the basis of a new misdemeanor conviction or a new misdemeanor conviction and technical violations shall ordinarily be held from six (6) to nine (9) months from the last Board action.

103.6 The rehearing for a violator who has less than five (5) years remaining to be served and whose release was revoked on the basis of a new felony conviction or a new felony conviction and other violations of release shall ordinarily be held from nine (9) to fifteen (15) months from the last Board action.

103.7 The rehearing for a violator who has five (5) or more years remaining to be served and whose release was revoked solely on the basis of technical violations shall ordinarily be held from six (6) to nine (9) months from the last Board action.

103.8 The rehearing for a violator who has five (5) or more years remaining to be served and whose release was revoked on the basis of a new misdemeanor conviction or a new misdemeanor conviction and technical violations shall ordinarily be held from nine (9) to fifteen (15) months from the last Board action.

103.9 The rehearing for a violator who has five (5) or more years remaining to be served and whose release was revoked on the basis of a new felony conviction or a new felony conviction and other violations of release shall ordinarily be held from fifteen (15) to twenty-four (24) months from the last Board action.

103.10 The Board may establish any rehearing date it determines to be proper, regardless of the length of sentence involved or the time remaining to be served.

199 DEFINITIONS

199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Board - the District of Columbia Board of Parole.

Committed youth offender - an individual committed pursuant to the provisions of 18 USC 5010(b) or 5010(c) of the Youth Corrections Act for training and treatment.

Conditional release from supervision - release from active supervision as a parolee prior to the final termination date of commitment.

Conditions of parole - those conditions of parole promulgated by the Board to govern the conduct of all parolees and mandatory releasees under supervision.

Conditions of parole, special - conditions imposed for a specific individual in addition to the regular conditions of parole.

Conditions of parole, technical violation of - a breach of one (1) or more of the conditions of parole established by the Board.

Conditions of parole, violation of - a breach of one (1) or more of the conditions of parole established by the Board, including a commission of a new and separate criminal offense.

Controlled substances - has the same meaning as that provided in D.C. Law 4-29 (D.C. Code §§33-512 through 523) as it may from time to time be amended.

Drug paraphernalia - has the same meaning as that provided in D.C. Laws 4-29 and 4-149 (D.C. Code §§33-550, §§33-6601 through 603) as they may from time to time be amended.

Good time, industrial - a deduction, over and above the allowable statutory good time from the term or terms imposed at a rate not to exceed that which is prescribed by 18 USC 4162 for prisoners actually employed in an industry or camp.

Good time, meritorious - a deduction from the term or terms imposed over and above the allowable statutory good time at a rate not to exceed that which is prescribed by 18 USC 4162 for prisoners performing exceptionally meritorious services or performing duties of outstanding importance in connection with institutional operations.

Good time, statutory - a deduction from the term or terms imposed at a rate prescribed by 18 USC 4161 and D.C. Code, §24-405 for good conduct.

199 DEFINITIONS (Continued)

Hearing, initial - a prisoner's personal appearance before the Board in cases where the Board is to establish the parole eligibility date for purposes of setting that date. For a youth offender, a hearing conducted to establish or reinforce the training and treatment program, clarify goals to be achieved, and determine the estimated time that will be required for accomplishment of the goals, in order to establish an institutional review hearing date.

Hearing, institutional review - a review hearing for a youth offender that is conducted by the Board on the date previously set by the Board subsequent to the initial hearing.

Hearing, original parole - a prisoner's personal appearance before the Board or its designated examiner for parole consideration upon expiration of the minimum sentence imposed or after serving one-third (1/3) of the maximum sentence imposed.

Hearing, revocation - a hearing conducted by the Board to permit an alleged violator, his or her attorney (if desired by the alleged violator), and witnesses to respond to charges of violation of any condition of parole did occur and take further action in keeping with the overall circumstances.

Mandatory release - when a prisoner, having served his or her term or terms less good time deductions is, upon release, deemed to have been released on parole until the expiration of the maximum term or terms imposed, less one hundred eighty (180) days. For youth offenders, the date on which the statute requires that the committed youth offender be released from further institutional care to supervision until the final expiration date of commitment.

Observation and study commitment - a temporary commitment to a designated center for evaluative study and observation of a youth offender to determine if the individual would derive benefit from existing youth center programs.

Parole - release under supervision for the balance of the sentence remaining to be served. For youth offenders, (also referred to as "youth conditional release") a board directed release under supervision for the balance of the commitment, occurring at any time prior to the statutory release date.

Preliminary interview - an interview conducted by the Board's examiner to advise an alleged violator of his or her procedural rights and also for the purpose of gathering facts and information concerning a releasee's alleged violation(s) of the conditions of his or her parole.

Rehearing - a prisoner's personal appearance before the Board or its designated examiner for reconsideration for parole after having being denied parole at an initial hearing.

Unconditional discharge - release from further supervision and discharge from further custody of the commitment prior to the final expiration date by issuance by the Board of an order and certificate setting aside the conviction and expunging the record.

Youth offender - any individual eligible for commitment under the provisions of the Youth Corrections Act (18 USC 5005) at time of conviction.

CHAPTER 2 PAROLE OF ADULT PRISONERS

200 ELIGIBILITY FOR PAROLE AND INITIAL HEARING

200.1 In accordance with D.C. Code, §24-204 the Board shall be authorized to release a prisoner on parole in its discretion after he or she has served the minimum term or terms of the sentence imposed or after he or she has served one-third (1/3) of the term or terms for which he or she was sentenced, as the case may be, if the following criteria are met:

(a) The prisoner has observed substantially the rules of the institution;

(b) There is reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(c) In the opinion of the Board, the release is not incompatible with the welfare of society.

200.2 The Board, upon receipt of classification and evaluation material (which is to be received sixty (60) days after commitment), shall conduct an initial hearing for prisoners for whom the Board is required to establish parole eligibility.

200.3 At the initial hearing under §200.2, the Board shall establish a parole eligibility date and may do the following:

(a) Grant parole, on or after the established date;

(b) Deny parole; or

(c) Continue the case to the established eligibility date.

200.4 Ordinarily, the Board shall not establish a parole eligibility date that would exceed one-third (1/3) of the maximum sentence imposed.

201 REDUCTION IN MINIMUM SENTENCE

201.1 Applications for a reduction in minimum sentence shall be accepted and considered by the Board; Provided, that a prisoner submitting an application shall have served three (3) or more years of the prescribed portion of his or her sentence.

201.2 If an application for reduction in minimum sentence is denied by the Board, there shall be a waiting period of two (2) years before the Board will again consider the application unless there are exceptional circumstances.

201.3 Approval of an application for a reduction in minimum sentence pursuant to D.C. Code, §24-201(c) shall require the consent of all current Board members.

202 HEARINGS PRIOR TO EXPIRATION OF MINIMUM SENTENCE

202.1 The Board shall permit an individual serving a sentence in which the minimum term is or exceeds three (3) years to file an application for parole six (6) months prior to the actual eligibility date. The Board shall then conduct a parole hearing.

202.2 If parole is granted under this section, it shall not become effective until on or after the date the individual actually completes serving his or her minimum term and is eligible for release on parole.

203 RESERVED

204 PROCEDURES FOR GRANTING PAROLE

204.1 As its criteria for determining whether an incarcerated individual shall be paroled or reparoled, the Board shall use the criteria set forth in this section and Appendices 2-1 and 2-2 to this chapter. These criteria consist of pre and post-incarceration factors which enable the Board to exercise its discretion when, and only when, release is not incompatible with the safety of the community. Any parole release decision falling outside the numerically determined guideline shall be explained by reference to the specific aggravating or mitigating factors as stated in Appendices 2-1 and 2-2.

204.2 The Board shall assign each candidate for parole a salient factor score (SFS) which shall be one of the factors used in calculating parole eligibility pursuant to the provisions of this section.

204.3 The Board shall utilize the SFS as an actuarial parole prognosis aid to assess the degree of risk posed by a parolee.

204.4 For the purposes of calculating the SFS, the Board shall assign a numerical value to each of the following categories:

(a) Prior convictions and adjudications;

(b) Prior commitments of more than thirty (30) days;

(c) Age at commission of current offense;

(d) Recent commitment-free period;

(e) Status of prisoner at time current offense; and

(f) History of heroin or opiate dependence.

204.5 In assigning a SFS numerical value for the factor of prior convictions and adjudications pursuant to §204.4(a), the Board shall count the following:

(a) All convictions and adjudications for criminal offenses (except as excluded by §204.6), other than the current offense;

(b) Convictions for offenses committed while on bail or probation for the current offense;

(c) Juvenile delinquency adjudications except the following:

(1) Status offenses (e.g., runaway, truancy, habitual disobedience); and

204 PROCEDURES FOR GRANTING PAROLE (Continued)

204.5 (Continued)

(2) Criminal offenses committed at age fifteen (15) or younger unless it resulted in a commitment of more than thirty (30) days or involved violence (as defined in §23-1331(a), D.C. Code (1981 ed.)), use of weapons (as defined by §22-3202(a), D.C. Code (1981 ed.)), or drug trafficking.

(d) Military convictions for acts that are generally prohibited by civilian criminal law;

(e) Criminal conduct resulting in a judicial determination of guilt or an admission of guilt before a judicial body, even if no formal conviction results;

(f) Convictions and adjudications even though later set aside for civil purposes;

(g) Foreign convictions and adjudications for conduct that is criminal in the United States; and

(h) Forfeitures of collateral if the offense would otherwise be counted.

204.6 In assigning a SFS numerical value for the factor of prior convictions and adjudications, the Board shall not count the following:

(a) Convictions and adjudications for misdemeanors for which the maximum punishment is not more than ninety (90) days in prison;

(b) Convictions and adjudications reversed or vacated unless the prisoner has been retried and reconvicted; and

(c) Convictions and adjudications occurring prior to a conviction and adjudication-free period of ten (10) years in the community immediately prior to the commission of the current offense.

204.7 In assigning a SFS numerical value for the factor of prior commitments of more than thirty (30) days pursuant to §204.4(b), the Board shall count the following:

(a) All prior commitments actually imposed of more than thirty (30) days resulting from convictions and adjudications counted pursuant to §204.5; and

204 PROCEDURES FOR GRANTING PAROLE (Continued)

204.7 (Continued)

(b) Prior commitments of more than thirty (30) days imposed upon revocation of probation or parole where the probation or parole resulted from a conviction or adjudication counted pursuant to §204.5.

204.8 Concurrent or consecutive sentences, whether imposed at the same time or at different times, that result in a continuous period of confinement shall be counted as a single commitment.

204.9 Commitments of more than thirty (30) days imposed for an escape, an attempted escape, or for criminal conduct committed while in confinement or escape status shall be counted as a separate commitment.

204.10 A commitment under §204.4(b) means confinement in a jail, prison, juvenile institution, or residential or community treatment center.

204.11 A prior commitment for more than thirty (30) days shall be counted under §204.7(a) despite avoidance of actual confinement through escape or bail pending appeal.

204.12 In assigning a SFS numerical value for the factor of age at commission of the current offense pursuant to §204.4(c), the Board shall, in the case of a parole or probation violator, use the age at the commencement of the conduct constituting the parole or probation violation.

204.13 In assigning a SFS numerical value for the factor of recent commitment-free period pursuant to §204.4(d), the Board shall regard a prisoner's commitment as terminated when he or she is released from confinement status regardless of where confinement occurs.

204.14 In assigning a SFS numerical value for the factor of status of the prisoner at the time of commission of the current offense pursuant to §204.4(e), the Board shall not consider a prisoner to have been on parole or probation if at the time of the commission of the current offense that parole or probation was unsupervised.

204.15 In assigning a SFS numerical value to the factor of history of heroin or opiate dependence under §204.4(f), the Board shall not consider the prisoner to have had a history of dependence if the prisoner had no dependence for the ten (10) year period preceding the commission of the current offense, not counting any time spent in confinement.

204 PROCEDURES FOR GRANTING PAROLE (Continued)

204.16 For the purposes of this chapter, heroin or opiate dependence refers to physical or psychological dependence, or regular or habitual usage.

204.17 The Board shall use the parole candidate's SFS to determine which risk category applies to the candidate, as follows:

(a) 10-9 = low risk

(b) 8-6 = fair risk

(c) 5-4 = moderate risk

(d) 3-0 = high risk

204.18 After determining which risk category applies to a parole candidate, the Board shall consider the following pre and post incarceration factors to determine whether a candidate should be granted parole:

(a) Whether the current offense involved a felony in which the parole candidate caused, attempted to cause, or threatened to cause death or serious bodily injury to another individual;

(b) Whether the parole candidate has two (2) or more previous convictions for a felony of the nature described in §204.18(a);

(c) Whether the parole candidate has ever been convicted of a crime of violence (as defined in §23-1331(4), D.C. Code (1981 ed.)) while under the influence of PCP (other than current offense);

(d) Whether the current offense involved a felony in which the parole candidate used a dangerous weapon (as defined by §22-3202(a), D.C. Code (1981 ed.));

(e) Whether the parole candidate has two (2) or more previous convictions for a felony of the nature described in §204.18(d);

(f) Whether the current offense involved a felony conviction under the D.C. Uniform Controlled Substances Act for distribution or intent to distribute illicit substances;

(g) Whether the parole candidate has two (2) or more previous convictions under the D.C. Uniform Controlled Substances Act;

204 PROCEDURES FOR GRANTING PAROLE (Continued)

204.18 (Continued)

(h) Whether the parole candidate has committed serious disciplinary infractions (adjudicated under the Department of Corrections' due process procedures) while under confinement for the current offense; and

(i) Whether the parole candidate has demonstrated sustained achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense.

204.19 After determining an adult parole candidate's SFS score and after applying the pre and post incarceration factors to arrive at a total point score pursuant to §204 and Appendix 2-1, the Board shall take one (1) of the following actions:

(a) IF POINTS = 0: Parole shall be granted at initial hearing with low level of supervision required;

(b) IF POINTS = 1: Parole shall be granted at initial hearing with high level of supervision required;

(c) IF POINTS = 2: Parole shall be granted at initial hearing with highest level of supervision required; or

(d) IF POINTS = 3-5 Parole shall be denied at initial hearing and rehearing scheduled.

204.20 After determining a youth offender parole candidate's SFS score and after applying the pre and post incarceration factors to arrive at a total point score pursuant to §204 and Appendix 2-1, the Board shall take one (1) of the following actions:

(a) IF POINTS = 0: Parole shall be granted at initial hearing with conditions established to address treatment needs; or

(b) IF POINTS = 1-5: Parole shall be denied at initial hearing and a rehearing scheduled based on estimated time to achieve program objectives established by the classification team and the Board of Parole.

204 PROCEDURES FOR GRANTING PAROLE (Continued)

204.21 In determining whether to release on parole an adult or a youth offender appearing before the Board at a parole rehearing, the Board shall take the total point score from the initial hearing and adjust that score according to the institutional record of the candidate since the last hearing pursuant to Appendix 2-2. The Board shall then take one of the following actions:

(a)	IF POINTS = 0-3:	Parole shall be granted at this rehearing with highest level or supervision required; or
(b)	IF POINTS - 4-5:	Parole shall be denied and a rehearing date scheduled.

204.22 The Board may, in unusual circumstances, waive the SFS and the pre and post incarceration factors set forth in this chapter to grant or deny parole to a parole candidate. In that case, the Board shall specify in writing those factors which it used to depart from the strict application of the provisions of this chapter.

205 GRANTING PAROLE: LOSS AND RESTORATION OF GOOD TIME

205.1 In general, the Board shall not grant parole unless the prisoner has substantially observed the rules of the institution in which he or she is confined.

205.2 Since the forfeiture of good time indicates that the prisoner has violated the rules of the institution to a serious degree, and that the prisoner may lack the emotional controls necessary for making a satisfactory adjustment in the community, parole shall not be granted where a forfeiture of good time remains on the record.

205.3 In exceptional cases, where it appears warranted on the basis of the prisoner's whole record, parole may be granted notwithstanding the fact that the forfeited good time has not been restored.

205.4 In other cases, parole may be granted conditionally pending restoration of the forfeited good time.

205.5 In no case shall forfeited good time abridge the right of a prisoner to apply for or receive a parole hearing.

206 PAROLE TO DETAINER

206.1 The policy and practice of the Board with regard to parole to detainers shall be generally in accord with the principles recommended by the Association of the Interstate Compact for the Supervision of Parolees and Probationers.

206.2 The status of detainers placed against prisoners in District of Columbia correctional institutions shall be investigated so far as is reasonably possible prior to parole hearings.

206.3 The Board may grant parole to a detainer if a prisoner is in other respects considered a good parole risk.

206.4 Arrangements for supervision by another jurisdiction holding a detainer shall be made prior to issuing a release certificate if the jurisdiction holding the detainer is the prisoner's intended state of residence.

206.5 Alternate release plans shall be formulated and approved by the Board for prisoners paroled to a detainer when the following criteria apply:

(a) The prisoner, after disposition of the detainer has been made, is still accountable to the Board; and

(b) The prisoner's approved place of residence will be the District of Columbia.

207 CONDITIONS OF RELEASE

207.1 Where parole has been granted and an effective release date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good institutional conduct record and the completion of a satisfactory approved release plan for supervision.

207.2 The Board may reconsider any case prior to the actual release date on its own motion, and may advance or postpone the effective release date, or rescind and deny a parole previously granted.

207.3 The Board may also, on its own motion, reconsider any case where parole has been previously considered and denied, and may grant parole previously denied.

207.4 After a prisoner has been granted parole, the Board shall be notified of any serious breach of institutional rules committed by the prisoner prior to date of actual release.

207.5 Prisoners reported for violations prior to release shall not be released until the institution has been advised that no change has been made in the Board's order granting parole.

207.6 Parole is granted subject to the conditions imposed by the Board as set forth in the Certificate of Parole. When parole is granted in the District of Columbia the parolee shall agree to do the following:

(a) Obey all laws;

(b) Report immediately upon release to his or her assigned parole officer for instructions;

(c) Remain within the geographic limits fixed in the parole certificate unless official approval is obtained;

(d) Refrain from visiting illegal establishments;

(e) Refrain from possessing, selling, purchasing, manufacturing or distributing any controlled substance, or related paraphernalia;

(f) Refrain from using any controlled substance or drug paraphernalia unless such usage is pursuant to a lawful order of a practitioner and the parolee promptly notifies the Board and his or her parole officer of same;

(g) Be screened for the presence of controlled substances by appropriate tests as may be required by the Board or the Chief Parole Officer;

(h) Refrain from owning, possessing, using, selling, or having under his or her control any deadly weapon or firearms;

207 CONDITIONS OF RELEASE (Continued)

207.6 (Continued)

(i) Find and maintain legitimate employment, and support legal dependents;

(j) Keep the parole officer informed at all times relative to residence and work;

(k) Refrain from entering into any agreement to act as an informer or special agent for any law enforcement agency; and

(l) Cooperate with the Board and those responsible for his or her supervision and carry out all instructions of his or her parole officer or special conditions imposed by the Board.

207.7 The Board shall add the following as a condition of release for those already on parole: **that all parolees be screened for the presence of controlled substances by appropriate tests as may be required by the Board or the Chief of Parole.**

207.8 A positive test result for the presence of a controlled substance shall be evidence that a parolee used the drug for which he or she tested positive.

207.9 The Board may add to, modify, or delete any condition of parole at anytime.

207.10 If any change in the conditions of parole is ordered by the Board, the parole officer shall advise the parolee.

208 RELEASE PLANNING

208.1 The details of each plan for release shall be verified by the Supervision Unit of the Department of Corrections.

208.2 In cases where parole has been granted but release plans have not been submitted by the prisoner for investigation, the Supervision Unit shall assist in formulating release plans, and shall submit the plans following investigation to the Board for approval.

208.3 All grants of parole shall be conditional on the formulation of acceptable and suitable release plans.

208.4 Release certificates shall not be issued until a release plan has been approved by the Board.

208.5 If all efforts to formulate and verify an acceptable suitable parole plan prove futile, the Board shall be notified in a detailed report submitted no later than thirty (30) days after the effective release date.

208 RELEASE PLANNING (Continued)

208.6 The following shall be considered in the formulation of a release plan for approval and eligibility:

(a) Evidence that the parolee will have an acceptable residence and will be legitimately employed immediately upon release; Provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Board;

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

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

209 RELEASE AND TRAVEL TO OTHER JURISDICTIONS

209.1 The Board, in its discretion, may parole any individual to live and remain in a state other than the District of Columbia if the authorities of the intended state of residence accept the prisoner for supervision, and suitable release plans have been developed and approved by the Board.

209.2 Whenever it appears to the Board that there is a reasonable probability that a parolee could, if present in another state, obtain employment and establish an acceptable place of residence, and could reside in that state without violating the law, the Board may authorize the parolee's travel to that state without prior communication with the state authorities.

209.3 The Board shall request state supervision when evidence of suitable employment and residence has been submitted by the parolee and received by the Board.

209.4 Any parolee permitted to travel to another state for the purpose of re-establishing himself or herself as a law-abiding citizen of that state who fails to do either of the following shall be deemed a violator of the conditions of release and a warrant for arrest and return shall be issued by the Board:

(a) Communicate with the Board as directed; or

(b) Return to the District of Columbia when ordered to do so by the Board.

210 TEMPORARY TRAVEL TO OTHER JURISDICTIONS

210.1 The supervising parole officer may authorize travel to another jurisdiction to permit a parolee to attend the funeral of a deceased relative, visit a seriously ill relative, or for employment purposes.

210.2 Authorization of temporary travel shall not require prior approval of the Board, except as provided in §210.6.

210.3 Authorization for temporary travel shall not exceed thirty (30) days.

210.4 Authorization shall be given to the parolee in written form, and a copy shall be sent to the Board.

210.5 Travel for vacation purposes not exceeding a weekend nor a distance of approximately fifty (50) miles from the District of Columbia may be approved by the parole officer without prior Board approval.

210.6 Any extended vacation trips or travel exceeding the limits set forth in §§210.3 or 210.5 shall first be approved by the Board.

211 CHANGES IN RELEASE PLANS

211.1 The release plan approved and accepted by the Board may be changed after release upon application to and acceptance by the Chief Parole Officer of the Department of Corrections and approval by the Board.

211.2 Any special conditions established by the Board shall remain in effect unless the Board specifically modifies or rescinds those conditions.

212 MANDATORY RELEASE

212.1 When a prisoner has been denied parole at the original hearing and all subsequent hearings, and in those cases where the statutes specifically preclude parole consideration, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by the statutes.

212.2 Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, less one hundred eighty (180) days.

212.3 Each prisoner released in accordance with this section, shall be under the jurisdiction of the Board of Parole and subject to parole supervision.

213 SUPERVISION OF PAROLEES

213.1 The Department of Corrections shall provide parole supervision services for all prisoners, including committed youth offenders, paroled or released on mandatory release from a correctional institution or facility of the District of Columbia.

213.2 Supervision of all prisoners under the control of the Board of Parole shall be vested in the Chief Parole Officer for the Department of Corrections.

213.3 The Chief Parole Officer shall be responsible for formulating release plans for all prisoners under the jurisdiction of the Board.

213.4 The Chief Parole Officer shall cause all parolees to be screened periodically by appropriate tests for the presence of controlled substances.

213.5 As soon as he or she has access to any parolee who has been arrested, the Chief Parole Officer shall promptly cause the parolee to be screened by appropriate tests for the presence of controlled substances.

213.6 The Chief Parole Officer shall notify the Board of all parolees with positive test results, i.e., those with a detectable level of controlled substances.

213.7 The Chief Parole Officer shall promptly notify the Board whenever a parolee or mandatory releasee under the jurisdiction of the Board has been accused of committing a crime, implicated in criminal activity, or alleged to have violated any other conditions of parole.

213.8 The Chief Parole Officer shall request the Board to issue a violator warrant for any parolee with a posititve test result for phencyclidine, or a phencyclidine immediate precursor (PCP) in violation of his or her conditions of parole.

213.9 The Chief Parole Officer may request that the Board issue a violator warrant for a parolee accused of a new criminal offense.

213.10 Upon receipt of information by the Office of Parole Supervision that a parolee or mandatory releasee under jurisdiction of the Board has been accused of committing a crime, implicated in criminal activity, or alleged to have violated any other condition of parole, the Office shall bring that information, along with a detailed report as to the parolee's overall adjustment while under supervision, to the attention of the Board.

213 SUPERVISION OF PAROLEES (Continued)

213.11 Parole officers shall submit an annual summary review on the progress of each parolee and mandatory releasee under their supervision who, upon release, will be under actual supervision for thirty (30) months or more.

213.12 Annual reviews shall be submitted to the Board during the month in which the anniversary of the date the releasee came under actual supervision occurs.

214 RELEASE FROM SUPERVISION

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

214.2 Consideration for release from parole supervision shall be given, but not limited to, those parolees who will be under supervision for a period of thirty (30) months or more.

214.3 Consideration for release from supervision of parolees who have a parole supervision period of less than thirty (30) months shall be given only in those cases where exceptional or unusual circumstances exist.

214.4 Recommendations for release from supervision shall not be considered for any parolee or mandatory releasee who has not been under active supervision for at least one (1) year.

214.5 Consideration for release from supervision shall be exercised by the Board during an annual summary review of parole cases at the expiration of each year of parole supervision.

214 RELEASE FROM SUPERVISION (Continued)

214.6 At the expiration of each year of supervision in a parole case, the parole officer shall submit to the Board a written report on the community adjustment which the parolee has made during that period, together with a recommendation for or against his or her release from further parole supervision and the reasons for the recommendation.

214.7 Each report for release from parole supervision shall include a signed statement from the unit supervisor of the parole officer, indicating whether the unit supervisor approves or disapproves the recommendation of the parole officer. The statement of the unit supervisor shall include the supervisor's reasons for approving or disapproving the recommendation.

214.8 Reports concerning release from supervision shall be considered by at least two (2) members of the Board, and a decision shall be by majority vote.

214.9 No hearing shall be required for Board action on any of the reports required by this section.

215 ORDER OF RELEASE

215.1 When the Board approves a recommendation for release from further supervision, a written order of release from supervision shall be issued and signed by at least two (2) members of the Board.

215.2 A copy of the order of release shall be delivered to the releasee.

215.3 Each order of release shall state that the conditions of the releasee's parole are waived, except the condition that the shall not violate any law or engage in any conduct which might bring discredit to the parole system, under penalty of possible revocation of parole or of the order of release.

215.4 An order of release from supervision shall not release the parolee from the custody of the Attorney General or the jurisdiction of the Board before the following date, whichever is applicable:

(a) The maximum date of the term or terms imposed; or

(b) In the case of mandatory releasees, the maximum date of the term or terms imposed, less one hundred eighty (180) days.

215.5 An order of release shall not relieve a parolee of the responsibility to live a law-abiding and reputable life.

216 REVOCATION OF THE ORDER OF RELEASE

216.1 If, after an order of release from supervision has been issued by the Board (but prior to the expiration of the sentence(s) imposed or, in the case of a mandatory release, the expiration date of the maximum period of supervision), the parolee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Board, may, in its discretion, do any of the following:

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

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

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

217 ISSUANCE OF WARRANTS

217.1 A warrant for the detaining or the retaking or any person under the jurisdiction of the District of Columbia Board of Parole may be issued by the Board or a member of the Board.

217.2 In cases of parolees, a violator warrant may be issued any time up until the maximum term of the parolee's sentence. In the case of the mandatory releasees, who are under supervision as if on parole, that action may be forthcoming up until the expiration date of the maximum term, less one hundred eighty (180) days.

217.3 The Board or a member of the Board may elect to issue a violator warrant in those cases where the only violation of parole is the alleged new offense for which the parolee has been arrested. The Board shall make a written determination as to whether there is probable cause to believe that the parolee has committed the crime for which he or she was arrested and as to the following:

(a) Risk to the community if the parolee is allowed to remain on parole;

(b) History of the parolee while under supervision;

(c) Whether the parolee has other outstanding criminal charges; and

(d) Seriousness of the offense for which the parolee has been arrested.

217.4 Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause.

217 ISSUANCE OF WARRANTS

217.5 The Board or a member of the Board may also elect to issue a violator warrant where there is probable cause to believe that the parolee has violated a condition of parole other than the alleged commission of a new offense.

217.6 With respect to the discretionary issuance of a violator warrant, the following shall apply:

(a) Action shall be taken in context of an analysis of all pertinent information and circumstances surrounding the alleged violation and shall consider the history of the parolee while under supervision, including, among other factors, the following:

(1) Any previous drug law violations;

(2) Employment status;

(3) Enrollment and pattern of participation in treatment programs;

(4) Family stability:

(5) Other violations of parole conditons; and

(6) Whether the alleged violations represent a pattern of abuse which is indicative of serious problems with parole adjustment; and

(b) It shall be the general policy of the Board to issue a violator warrant if there is evidence of illegal distribution, purchase, possession, or use of any controlled substance.

217.7 The Board shall issue a violator warrant when the Board or member thereof determines that there is probable cause to believe the following:

(a) That the parolee violated or attempted to violate any of the following provisions of the criminal code of the District of Columbia (or committed any equivalent act in any other jurisdiction), for which he or she was arrested:

(1) D.C. Code §22-2101 (Abduction);

(2) D.C. Code §22-501 (Aggravated Assault);

(3) D.C. Code §22-401 (Arson);

(4) D.C. Code §22-1801 (Burglary);

(5) D.C. Code §6-2311, §22-3202 and §22-3203 (Firearms Violations);

217 ISSUANCE OF WARRANTS

217.7 (Continued)

(6) D.C. Code §22-501, §22-2401 or §22-2403 (Homicide);

(7) D.C. Code §22-2901 (Robbery);

(8) D.C. Code §22-2801 and §22-3501 (Sexual Assault); or

(9) D.C. Code §33-541, §33-542, §33-543 and §§33-603 (Felony Drug Law Violations); or

(b) That the parolee has violated a condition of his or her parole by use, possession, sale, purchase, manufacture, or distribution of phencyclidine, or a phencyclidine immediate precursor (PCP).

218 DISPOSITION OF ISSUED WARRANTS

218.1 If the Board issues a violator warrant, it shall direct what action(s) shall be taken concerning the disposition of the warrant. The Board may order the following actions:

(a) That the warrant be issued and executed, so that the alleged violator is taken into custody on a warrant;

(b) That the warrant be placed as a detainer against the alleged violator if he or she is in custody on a new pending charge;

(c) That the warrant be executed if the violator is in custody and charges against him or her have been adjudicated; or

(d) That the warrant be placed as a detainer against the violator if he or she is in the custody of another jurisdiction.

218.2 The Board may recall a warrant that it has issued prior to execution of that warrant. If the Board recalls the warrant, it shall either hold further disposition in abeyance, rescind the warrant, or take appropriate action.

218.3 The Board shall review the disposition of each warrant issued as a detainer every six (6) months. The Board may, on its own initiative or following a petition from other sources, give earlier consideration to the status of a detainer.

218.4 The Board shall consult with the Office of the United States Attorney for the District of Columbia and may consult with other appropriate criminal justice agencies whenever it reviews the disposition of detainers.

217 ISSUANCE OF WARRANTS

217.7 (Continued)

(6) D.C. Code §22-501, §22-2401 or §22-2403 (Homicide);

(7) D.C. Code §22-2901 (Robbery);

(8) D.C. Code §22-2801 and §22-3501 (Sexual Assault); or

(9) D.C. Code §33-541, §33-542, §33-543 and §§33-603 (Felony Drug Law Violations); or

(b) That the parolee has violated a condition of his or her parole by use, possession, sale, purchase, manufacture, or distribution of phencyclidine, or a phencyclidine immediate precursor (PCP).

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(c) That the warrant be executed if the violator is in custody and charges against him or her have been adjudicated; or

(d) That the warrant be placed as a detainer against the violator if he or she is in the custody of another jurisdiction.

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218.3 The Board shall review the disposition of each warrant issued as a detainer every six (6) months. The Board may, on its own initiative or following a petition from other sources, give earlier consideration to the status of a detainer.

218.4 The Board shall consult with the Office of the United States Attorney for the District of Columbia and may consult with other appropriate criminal justice agencies whenever it reviews the disposition of detainers.

218 DISPOSITION OF ISSUED WARRANTS (Continued)

218.5 The Board may, if it chooses, conduct a dispositional interview with the prisoner at the place of his or her confinement before taking any action. If that dispositional interview is conducted, the Board shall permit the presence of an attorney and witnesses, if they are desired, under the same conditons as exist with reference to revocation hearings.

218.6 Either upon interview by the Board or its examiner or a review of the record, the Board may do the following:

(a) Let the detainer stand;

(b) Execute the warrant, and schedule a revocation hearing;

(c) Order the warrant withdrawn and thus remove the detainer, or

(d) Continue the case pending receipt of further information.

218.7 Any action as concerns disposition of a detainer shall be by majority decision of the Board.

218.8 Where a detainer has been issued pursuant to the Five-Day (5) Hold provisions of §23-1322(e), D.C. Code, 1981 ed., and there has not been significant progress made on the processing of the case against the alleged violator by the court or procsecutor six (6) months following that issuance, the Board may lift the detainer or enter an order of reinstatement in the case of an executed warrant. Prior to taking that action, however, the Board shall consult with the Office of the United States Attorney and may consult with other appropriate criminal justice agencies relative to the status of case adjudication.

218.9 Any authorized officer of the District of Columbia Department of Corrections, member of the District of Columbia Metropolitan Police Department or Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole or mandatory release violator is delivered, shall in keeping with instructions of the Board, act on that warrant by placing a detainer or by taking that prisoner and returning or removing him or her to the place of confinement from which he or she was paroled or mandatorily released or to the place of confinement as may be designated by the Attorney General of the United States.

219 REVOCATION OF PAROLE: PRELIMINARY INTERVIEWS AND REVOCATION HEARING

219.1 An alleged parole violator retaken under a warrant issued by the Board or a member thereof has the right to have a preliminary interview conducted by the Board, a member of the Board, an examiner or an official designee at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay. The purpose of the preliminary interview shall be to give the alleged violator notice of the following:

219 REVOCATION OF PAROLE: PRELIMINARY INTERVIEWS AND REVOCATION HEARING (Continued)

219.1 (Continued)

(a) The condition(s) of parole alleged to have been violated or offense(s) alleged to have been committed;'

(b) The right to written notice of the claimed violations or parole; disclosure to the parolee of evidence against him or her; and opportunity to be heard in person, to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation) at a hearing before the Board or a member of the Board; and a written statement of the Board's final determination;

(c) The approximate time, place, and purpose(s) of the revocation hearing; and

(d) That if he or she admits the charge(s) and waives his or her right to be represented by counsel, and to present and confront witnesses at a revocation hearing before the Board or a member thereof, the person conducting the preliminary interview will conduct the revocation hearing at that time and place.

219.2 The Board or a member may review the record in lieu of conducting a revocation hearing upon a written determination that at the preliminary interview the following occurred:

(a) The parolee knowingly and intelligently admitted committing the alleged offense or violating conditions of parole; and

(b) The parolee knowingly and intelligently waived his or her right to be represented by counsel, and to present and confront witnesses at a revocation hearing before the Board or a member thereof.

219.3 If the parolee chooses to exercise his or her right to a revocation hearing before the Board or a member of the Board, the revocation hearing shall be held at or reasonably near the place of the alleged parole violation or arrest, within sixty (60) days of the preliminary interview.

219.4 If the revocation hearing is conducted by a member of the Board or an examiner, that member or examiner shall submit proposed findings, conclusions and recommendations in writing to the Board. Only the Board may thereafter terminate parole or modify the terms and conditions of parole.

219.5 If the Board finds after a revocation hearing that the preponderance of evidence does not establish a violation of the conditions of parole, the Board shall immediately reinstate the parolee to parole supervision.

219 REVOCATION OF PAROLE: PRELIMINARY INTERVIEWS AND REVOCATION HEARING (Continued)

219.6 If the Board finds after a revocation hearing that by a preponderance of evidence the parolee has violated a condition of his or her parole, the Board may take any of the following actions:

(a) Reinstate the parolee to supervison;

(b) Reprimand the parolee;

(c) Modify the parolee's conditions of parolee;

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

(e) Formally revoke parole or release.

219.7 If the Board finds by a preponderance of evidence that a parolee has violated a condition of his or her parole by the use, sale, possession, purchase, manufacture, production, or distribution of phencyclidine, or a phencyclidine immediate precursor (PCP), the Board shall revoke parole.

219.8 In determining whether or not parole should be revoked, in those instances not covered in §219.7, when one (1) or more violations have been proved by a preponderance of evidence, the Board shall utilize among others, the following criteria which shall be explicitly addressed in the Board's written decision relative to the case:

(a) Risk to the community if the parolee is allowed to remain on parole supervison;

(b) Seriousness of violation or violations with which the parolee has been charged or of which the parolee has been convicted;

(c) Whether violations represent a continuing pattern or are indicative of serious adjustment problems which evidence a disrespect for the parole system or which could lead to further criminal involvement;

(d) Whether the criminal charge or conviction involves one (1) or more of the offenses or violations set forth in §217.7 of this chapter;

(e) Whether the parolee has other outstanding criminal charges; and

(f) Whether there is evidence of other negative adjustment by the parolee while under supervisions.

219 REVOCATION OF PAROLE: PRELIMINARY INTERVIEWS AND REVOCATION HEARING (Continued)

219.9 Counsel may be retained by the parolee, or if he or she is financially unable to retain counsel, represntation may be obtained pursuant to applicable provisions of the District of Columbia Criminal Justice Act, §§11-2601 et seq., D.C. Code, 1981 ed. Neither the Board nor its staff shall initiate action or make any arrangement to obtain legal representation or witnesses for the alleged violator.

219.10 The alleged violator or his or her attorney shall secure witnesses to appear on his or her behalf. Witnesses shall appear voluntarily.

219.11 Neither the alleged violator nor his or her witnesses shall be placed under oath during the preliminary interview or the revocation hearing.

219.12 The Board shall furnish the parolee with a written notice of its determination not later than twenty-one(21) days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Board setting forth in writing the factors considered and reasons for that action, a copy of which shall be given to the parolee.

220 SERVICE OF VIOLATION TIME

220.1 If the Board orders that parole or mandatory relase be revoked and terminated, the prisoner, unless subsequently reparoled, shall serve the remainder of the sentence originally imposed less any commutation for good conduct which may be earned by him or her after his or her return to custody.

220.2 The time a prisoner was on parole or mandatory release shall not be taken into account to diminish the time for which he or she was sentenced.

§§ 221 - 229: RESERVED

230 CONDITIONAL RELEASE OF YOUTH OFFENDERS

230.1 When a youth offender has been sentenced under 18 USC 5010(e) for observation and study, the receiving institution shall prepare a report of its findings for the Board of Parole.

230.2 Upon receipt of the institutional report, within sixty (60) days after the date of commitment, the Board shall prepare and send its report to the committing judge. The report shall summarize the institution's findings and recommend what the Board considers to be the best available treatment plan.

230.3 The Board may at any time order the conditional release of a youth offender and direct that he or she be placed under parole supervision in the community subject to established conditions and rules which are to govern his or her activities and behavior while he or she is under supervision.

230.4 All youth offenders committed under the provisions of 18 USE 5010(b) or 5010(c) shall be eligible to be paroled by Board action within sixty (60) days after commitment to a facility or institution operated directly by or under contract to the D.C. Department of Corrections.

230.5 All Board decisions relating to any action taken within the purview of the Board's jurisdiction regarding approval of parole or setting of institutional review hearing dates, shall be by majority vote of the Board.

230.6 Pursuant to 18 USC 5018, the Board may revoke or modify any of its previous orders respecting a committed youth offender, except an order of discharge where it has acted to set aside the conviction, before the expiration of the maximum sentence imposed upon a committed youth offender.

231 HEARINGS FOR YOUTH OFFENDERS

231.1 The provisions of §103 of chapter 1 of this title shall apply to youth offenders.

231.2 A committed youth offender shall appear before the Board, a member of the Board, or an examiner for an initial personal hearing.

231.3 The initial hearing shall be held preferably within sixty (60) days after commitment, upon preparation by the institutional authorities of the necessary and required reports.

231.4 The purpose of the initial hearing shall be to discuss with the committed youth offender the following concerns:

(a) The youth offender's participation in training and treatment program as outlined and proposed by the institution;

(b) Recommendations for participation in alternate programs;

(c) The youth offender's institutional and self-established goals and means of achieving those goals;

(d) Consideration for a review date in light of estimated time needed to complete his or her program; and

(e) Consideration for parole.

231.5 After the initial hearing, if the Board does not grant parole, it shall set an institutional review hearing date.

231.6 On the date established by the Board subsequent to the initial hearing, or on any subsequent occasion upon Board review of the case by its own action or petition from any source, an institutional review hearing shall be conducted for the following purposes:

(a) Determining if any progress has been made;

(b) Determining if the program has been completed; and

(c) Determining whether the committed youth offender should be paroled.

231.7 The Board shall decide after each institutional hearing whether to approve a parole or establish a further institutional review hearing date.

231.8 The Board may, in its discretion, continue a case for further information or a special progress report before taking final action.

232 GRANTING CONDITIONAL RELEASE TO YOUTH OFFENDERS

232.1 The procedures set forth in §§204 through 211 of this chapter shall apply to the conditional release of committed youth offenders with respect to the following areas:

(a) Criteria for parole;

(b) Factors considered;

(c) Parole to detainer;

(d) Effective date of release to supervision;

(e) Release planning;

(f) Elements of the release plan;

(g) Release to other jurisdictions;

(h) Travel to other jurisdictions and residency;

(i) Temporary travel; and

(j) Changes in parole plans.

232.1 The Board may reconsider any case prior to actual release on parole or where parole has been previously considered and denied, on its own motion, and may do the following:

(a) Reopen and advance, postpone, or deny a parole previously granted;

(b) Grant parole to one previously denied; or

(c) Modify any previous order it has entered in the case.

233 MANDATORY RELEASE

233.1 When a committed youth offender has been denied conditional release to supervision by action of the Board throughout his or her stay in a facility or institution, that offender shall be mandatorily released not later than two (2) years prior to the full term expiration date of his or her sentence.

233.2 In cases of youth offenders committed under 18 USC 5010(b) mandatory release shall occur after service of four (4) years of the imposed six (6) year maximum term.

233 MANDATORY RELEASE (Continued)

233.3 In cases of youth offenders committed under 18 USC 5010(c) mandatory release shall occur two (2) years prior to the maximum term imposed by the court.

233.4 An offender confined continuously until the mandatory release date shall be issued a Youth Corrections Act Parole Certificate, and the release shall be processed following regular parole procedure upon achieving the mandatory release date for supervision, as if the offender were on parole until the expiration of his or her maximum term.

234 SUPERVISION OF CONDITIONALLY RELEASED YOUTH OFFENDERS

234.1 The Department of Corrections shall provide parole supervision services for all offenders conditionally released by the Board or released mandatorily from any youth correctional facility or other institution.

234.2 Supervision of all committed youth offenders under the control of the Board of Parole shall be vested in the Superintendent of Youth Services for the Department of Corrections. The Superintendent of Youth Services shall be responsible for formulating release plans for all offenders under the jurisdiction of the Board.

235 SUPERVISION REPORTS AND REVIEWS

235.1 Parole officers shall submit reports on all parolees and manditorily released youth offenders whose adjustment while under supervision in the community is marginal, or who may have become involved in situations that could warrant violator action.

235.2 Parole officers shall submit an annual summary review on the progress of each parolee or mandatory releasee under their supervision. These review reports shall be submitted to the Board during the month of the anniversary of the date of release to supervision.

235.3 Each annual review shall reflect the adjustment status of the case, the progress evident, and the problems still evident. It shall also contain the following:

(a) Any further recommended treatment;

(b) An evaluation noting further supervision plans;

(c) A recommendation from the parole officer (including reasons for the recommendation) whether the youth offender should be continued under regular supervision, placed on inactive supervision, or discharged from the remainder of his or her imposed term, and whether the offender's conviction should be set aside.

235 SUPERVISION REPORTS AND REVIEWS (Continued)

235.4 Each annual review shall also include a further recommendation from the parole officer's supervisor, containing the supervisor's approval or disapproval of the comments and recommendations of the parole officer (including reasons for approval or disapproval) in light of the information contained with respect to overall community adjustment.

RELEASE OF YOUTH OFFENDERS FROM SUPERVISION

236.1 The Board, in its discretion, may release a youth offender parolee from further active supervision prior to the expiration of the maximum term of his or her commitment.

236.2 The Board may also take action to discharge a case resulting in termination of the imposed sentence prior to completion of the maximum term to which the offender was sentenced and also in the setting aside of the conviction of record.

236.3 Consideration for release from active supervision or possible discharge and the setting aside of the conviction of record shall not be given until after the expiration of one (1) year of supervision on parole or mandatory release.

236.4 Consideration for release or discharge shall occur after receipt of the annual summary review report from the parole officer.

236.5 Annual summary review reports shall be considered by at least two (2) members of the Board, and a decision shall be by majority vote. No hearing shall be required for Board action.

ORDER OF RELEASE

237.1 When the Board approves of a recommendation for release from further supervision, a written order of release from active supervision shall be issued and signed by at least two (2) members of the Board.

237.2 The order of release shall state that the conditions of the releasee's parole are waived, except the condition that he violate no law nor engage in any conduct which might bring discredit to the parole system, under penalty of possible revocation of parole or of the order of release.

237.3 The order of release from supervision shall not release the parolee from the custody of the Attorney General or the jurisdiction of the Board before the maximum date of the term or terms imposed, nor shall it relieve the parolee of the responsibility to live a law abiding and reputable life.

238 REVOCATION OF RELEASE ORDERS OF YOUTH OFFENDERS

238.1 If, after an order of release from supervision has been issued by the Board, but prior to the expiration of the sentence imposed, the releasee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Board may, in its discretion, do the following:

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

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

(c) Impose any special conditions.

239 DISCHARGE AND SETTING ASIDE CONVICTION

239.1 When the Board approves of a recommendation for discharge from the remainder of the sentence prior to the expiration of the term, a written order of discharge shall be issued and signed by at lease two (2) members of the Board.

239.2 The Board shall also issue a certificate to the youth offender, indicating the discharge and confirming that the conviction under the Youth Corrections Act has been ordered set aside.

239.3 Once an Order of Discharge and certificate setting aside the conviction are signed and executed by the Board, that order may not be revoked at any later date.

240 VIOLATION OF CONDITIONS OF RELEASE

240.1 A warrant for the detaining or the retaking of any youth offender under the jurisdiction of the District of Columbia Board of Parole may be issued only by the Board or a member of the Board.

240.2 A warrant may be issued at any time before the expiration of the maximum expiration date of the term imposed.

240.3 The provisions of §§217 through 222 of this chapter shall apply to the determination of violations and revocation of conditional release for youth offenders.

240.4 Sentences imposed under the provisions of the Youth Corrections Act shall be computed uninterruptedly from the date of conviction. Any youth offender returned to custody as a violator whose parole is revoked, unless subsequently re-paroled shall be released on the maximum expiration date of the initial sentence imposed computed uninterruptedly from the date of the imposition of the sentence.

241 REHEARINGS AND DETAINER REVIEWS FOR YOUTH OFFENDERS

241.1 A youth offender who has had his or her parole revoked may be re-paroled at any time.

241.2 At the time the revocation hearing is held, and the Board acts to revoke the parole, it shall establish a date for a review hearing.

241.3 Unless the review date is subsequently amended by Board action, the youth offender shall appear at the time set for further consideration of his or her status.

241.4 The provisions of §224 of this chapter shall apply to detainer reviews for youth offenders.

299 DEFINITIONS

299.1 The provisions of §199 of chapter 1 of this title, and the definitions set forth in that section shall be incorporated in this section by reference.

APPENDIX 2-1

SALIENT FACTOR SCORE

(Used to determine numerical values for parole eligibility criteria pursuant to §204).

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE)..... ☐

None ..... = 3
One ..... = 2
Two or Three ..... = 1
Four or more ..... = 0

Item B: PRIOR COMMITMENT(S) OR MORE THAN THIRTY DAYS..... ☐
(ADULT OR JUVENILE)

None ..... = 2
One or Two ..... = 1
Three or more ..... = 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS..... ☐

Age at commencement of current offense
26 years of age or more ..... = 2
20-25 years of age ..... = 1
19 years of age or less ..... = 0

***Exception: If five or more prior commitments of more than thirty days (adult or juvenile), place an "X" here _____
and score this item ..... = 0

Item D: RECENT COMMITMENT-FREE PERIOD (THREE YEARS), ... ☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense ..... = 1

Otherwise ..... = 0

Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS ..... ☐
VIOLATOR THIS TIME

Neither on probation, confinement, or escape status at the time of the current offense; nor committed as a probation, parole confinement, or escape status violator this time ..... = 1

Otherwise ..... = 0

APPENDIX 2-1 (Continued)

Item F: HEROIN/OPIATE DEPENDENCE ..... ☐

No history of heroin/opiate dependence ..... = 1

Otherwise ..... = 0

TOTAL SCORE ..... ☐

Pre-Incarceration Factors

A. Salient Factor Score _____ (From SFS Worksheet)
Risk Group:

Low	_____ (10-9)	Moderate	_____ (5-4)
Fair	_____ (8-6)	High	_____ (3-0)

B. TYPE OF RISK ASSESSMENT:

1. Violence:

	Yes	No
a. Does the current offense involve a felony in which the defendant caused, attempted to cause or threatened to cause death or serious bodily injury to another individual?	___	___
b. Does the offender have two or more previous convictions for a felony described in (1.a)?	___	___

2. Weapons:

a. Does the current offense involve a felony in which the defendant used a dangerous weapon?	___	___
b. Does the offender have two or more previous convictions for a felony described in (2.a)?	___	___

3. Drug Trafficking:

a. Does the current offense involve a felony conviction under the D.C. Uniform Controlled Substances Act for distribution, or intent to distribute, illicit substances?	___	___

APPENDIX 2-1 (Continued)

Drug Trafficking: (Continued)

b. Does the offender have two or more previous convictions for significantly similar offenses as those described in (3.a) (i.e., convictions under this statute or a similar one in another jurisdiction)? ___ ___

Post-Incarceration Factors

A. INSTITUTIONAL ADJUSTMENT:

Has this offender committed serious disciplinary infractions (adjudicated under Department of Corrections due process procedures)? ___ ___

B. INSTITUTIONAL PROGRAM PARTICIPATION:

Has this offender demonstrated sustained achievement in the area of prison programs, industries, or work assignments during this period of incarceration? ___ ___

POINT ASSIGNMENT GRID
ADULT OFFENDERS

Instructions:

1. Circle the appropriate Salient Factor Score category.

2. Circle any aggravating or mitigating factors for which a finding has been made.

3. Within each applicable cell, circle the number of points to be added or subtracted from the baseline point assignment determined by the Salient Factor Score Category.

APPENDIX 2-1 (Continued)

POINT ASSIGNMENT GRID ADULT OFFENDERS (Continued_

	DEGREE OF RISK Salient Factor Score Category			
	Low	Fair	Moderate	High
	+0	+1	+2	+3
TYPE OF RISK				
a. Violence	+1	+1	+1	+1
b. Weapons				
c. Drug Trafficking				
2. Negative Institutional Behavior	+1	+1	+1	+1
3. Program Achievement	-1*	-1	-1	-1

* Applicable only where points have been added for aggravating factor.

TOTAL POINTS: _____

IF POINTS = 0: Parole shall be granted at initial hearing with low level of supervision required.

IF POINTS = 1: Parole shall be granted at initial hearing with high level of supervision required.

IF POINTS = 2: Parole shall be granted at initial hearing with highest level of supervision required.

IF POINTS = 3-5: Parole shall be denied at initial hearing and rehearing scheduled.

DECISION WORKSHEET: INITIAL HEARINGS

(1) Minimum Term: _____ (2) Maximum Term: _____
(3) Months in custody at Date of Hearing: _____
(4) Decision: / / Parole Date _____
/ / Rehearing Date _____
(5) Decision is Within _____ Below _____ Above _____ Guidelines

Reasons (if outside of the Guidelines):

WORSE RISK:

...Repeated failure under parole supervision;
...Current offense involves on-going criminal behavior;
...Lengthy history of criminally related alcohol abuse;

APPENDIX 2-1 (Continued)

WORSE RISK: (Continued)

...History of repetitive sophisticated criminal behavior;
...Unusually extensive and serious prior record (at least five felony convictions);
...Unusual cruelty to victims.
Specifically: _____

BETTER RISK: NOTE: Applicable only to offenders not classified low risks by the Salient Factor Score.

...record resulting exclusively from trivial offenses;
...substantial crime-free period for which credit not already given Salient Factor Score.
Specifically: _____

OTHER PRE-INCARCERATION FACTORS:

...This YCA offender would have been exposed to a maximum sentence of months had he/she been sentenced as an adult;
...Substantial cooperation with the government that has not been otherwise rewarded;
...Substantial period in custody on other sentence(s) or additional committed sentences. (NOTE: This circumstance can also be used as "other change in circumstances" below if a new committed sentence imposed after incarceration on the current offense).
...Other _____

Specifically: _____

POST-INCARCERATION FACTORS:

...Exceptional achievement in educational or vocational programs during period of incarceration;
...Change in the availability of community resources leading to better parole prognosis;
...Poor medical prognosis;
...Other change in circumstances _____

Specifically: _____

APPENDIX 2-1 (Continued)

POINT ASSIGNMENT GRID: INITIAL PAROLE CONSIDERATION
YCA OFFENDERS

Instructions:

1. Circle the appropriate Salient Factor Score category.

2. Circle any aggravating or mitigating factors for which a finding has been made.

3. Within each applicable cell, circle the number of points to be added or subtracted from the baseline point assignment determined by the Salient Factor Score category.

		DEGREE OF RISK Salient Factor Score Category			
		Low	Fair	Moderate	High
		+0	+1	+2	+3
1.	TYPE OF RISK a. Violence b. Weapons c. Drug Trafficking	+1	+1	+1	+1
2.	Negative Institutional Behavior	+1	+1	+1	+1

* As initial hearings for YCA offenders are held approximately 60 days after their incarceration, a reduction in points for sustained program achievement is not appropriate at the initial hearing.

TOTAL POINTS:_____

IF POINTS = 0: Parole shall be granted at initial hearing with conditions established to address treatment needs.

IF POINTS = 1-5: Parole shall be denied at initial hearing and a rehearing scheduled based on estimated time to achiev program objectives established by the classification team and the Board of Parole.

APPENDIX 2-2

REHEARING GUIDELINES
POINT ASSIGNMENT GRID AND FINDINGS WORKSHEET FOR REHEARINGS
ADULT AND YCA OFFENDERS

POINT GRID FOR PAROLE REHEARINGS

		POINTS
1.	Points From Previous Hearing	_____
2.	Negative Institutional Behavior Since Last Consideration	+1
3.	Program Achievement Since Last Consideration	-1

TOTAL POINTS: _____

IF POINTS = 0-3: Parole shall be granted at this rehearing with highest level of supervision required.

IF POINTS = 4-5: Parole shall be denied and a rehearing date scheduled.

Findings

		Yes	No
A.	INSTITUTIONAL ADJUSTMENT: Has this offender committed serious infractions (adjudicated under Department of Corrections due process procedures)?	___	___
B.	INSTITUTIONAL PROGRAM PARTICIPATION: Has this offender demonstrated sustained achievement in the area of prison programs, industries or work assignments during this period of incarceration?	___	___

APPENDIX 2-2

DECISION WORKSHEET: REHEARINGS

(1) Minimum Term: _____ (2) Maximum Term: _____
(3) Months in custody at Date of Hearing: _____
(4) Decision: / / Parole Date _____
/ / Rehearing Date _____
(5) Decision is Within _____ Below _____ Above _____ Guidelines

Reasons (if outside of the Guidelines):

...Change in the availability of community resources leading to better parole prognosis
...Poor medical prognosis
...Other change in circumstances _____

_____

_____

Specifically: _____

_____

Appendix C:
1991 POLICY GUIDANCE

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF PAROLE
717 14TH STREET N.W. SUITE 300
WASHINGTON D.C. 20005

POLICY GUIDELINE

SUBJECT: Definitions of Terms Used in Parole Guidelines

I. AUTHORITY: DCMR Title 28, Section 204 and Appendices 2-1 and 2-2, May 1987

II. PURPOSE: To define criteria and parameters for determining the applicability of descriptive terminology used in the Parole Guidelines for release decisionmaking, and to facilitate consistency in Guideline application.

III. APPLICABILITY: All cases requiring Board action in which the Parole Guidelines are applied.

IV. REFERENCES: D.C. Department of Corrections Rules published at 28 DCMR Sections 502 and 503, May 1987 (copy attached); Board of Parole Policy Guideline regarding the establishment of dates for parole reconsideration, adopted on December 16, 1991.

V. RATIONALE:

Many of the descriptive terms used in the Parole Guidelines criteria are judgmental and subjective. As such, they lend themselves to disparate interpretations and applications by Guideline users. To ensure equitable treatment of similarly-situated offenders, these terms require definitions that facilitate equitable application across affected cases, while preserving sufficient discretion to accommodate individual circumstances.

VI. POLICY:

The following definitions shall apply to Parole Guidelines terminology in the release decisionmaking process; however, the weight accorded to any applicable countervailing factor shall be at the discretion of the Board.

A. POST-INCARCERATION FACTORS:

1. Negative Institutional Behavior consists of serious or repeated major disciplinary infractions as described below that are sanctioned under Department of Corrections due process procedures.

a. In INITIAL PAROLE CONSIDERATION cases, the following disciplinary infractions shall ordinarily be considered as negative institutional behavior:

(1) One Class I Offense for murder, manslaughter, kidnapping, armed robbery or first degree burglary at any time during the minimum sentence (see DCMR 28-502.3, May 1987); OR

(2) One Class I Offense as defined at DCMR 28-502.4 through 502.17 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

(3) Two Class II Offenses as defined at DCMR 28-503.2 through 503.12 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer.

b. In PAROLE RECONSIDERATION cases, the following disciplinary infractions occurring since the preceding release consideration on the sentence shall ordinarily be considered as negative institutional behavior:

(1) One Class I Offense (see DCMR 28-502.3 through 502.17, May 1987); OR

(2) Two Class II Offenses (see DCMR 28-503.2 through 503.12, May 1987).

c. In RESCISSION CONSIDERATION cases, the following disciplinary infraction shall ordinarily considered as negative institutional behavior:

(1) Removal from Work Release for one or more rule violations without subsequent reinstatement, EXCEPT WHERE REMOVAL WAS AT THE EXPRESS REQUEST OF THE OFFENDER; AND

(2) No point for negative institutional behavior was assessed in the most recent Parole Guideline computation.

2. **Sustained Program or Work Assignment Achievement** consists of completion of a program or work assignment as described below that shall ordinarily be documented by a certificate, a diploma, a report from an institutional teacher, counselor or work supervisor, OR other documentary evidence.

a. In INITIAL PAROLE CONSIDERATION cases, the following accomplishments shall ordinarily be considered as sustained program or work assignment achievement during the period of incarceration:

(1) Successful completion of one or two educational or vocational programs, or program levels, each of which enabled the offender to develop an academic or job-related skill, OR enabled the offender to progress to a higher level of difficulty or skill in the program area; OR

(2) Award of a GED where the offender possessed the prerequisite skills for participation in the program at the time of incarceration on the sentence; OR

(3) Successful completion of the requirements and award of an Associate's or Bachelor's degree; OR

(4) Successful completion of one or more short-term special needs programs, such as drug treatment or psychological counseling, to address the offender's identified problems;

NOTE: Completion of the 2-day DAAP program alone does NOT qualify as sustained program achievement.

(5) Satisfactory participation in one or more work details for at least one-third of the period of incarceration.

b. In PAROLE RECONSIDERATION cases, the accomplishments set forth in Section VI-A-2(a) of this policy shall ordinarily be considered as sustained program or work assignment achievement where completion occurred since the preceding consideration for release on the sentence.

B. FACTORS COUNTERVAILING A RECOMMENDATION TO DENY PAROLE:

1. **Exceptional Program or Work Assignment Achievement** consists of completion of a program or work assignment as described below that shall ordinarily be documented by a certificate, a diploma, a report from an institutional teacher, counselor or work supervisor, OR other documentary evidence.

a. In INITIAL PAROLE CONSIDERATION cases, the following accomplishments shall ordinarily be considered as exceptional program or work assignment achievement during the period of incarceration on the sentence:

(1) Successful completion of three or more educational or vocational programs, or program levels, each of which enabled the offender to develop an academic or job-related skill, OR enabled the offender to progress to a higher level of difficulty or skill in the program area; OR

(2) Award of a GED where more than six (6) months of study were necessary to meet the requirements, i.e., the offender began academic courses of study without the prerequisite skills for participation in the GED program and successfully completed the coursework necessary to earn a GED while incarcerated; OR

(3) Award of an Associate's or Bachelor's degree where the offender needed 18 or more credits to fulfill the requirements for the degree; OR

(4) Participation at a better than satisfactory level in one or more work details as evidenced by three or more promotions or formal increases in levels of responsibility.

b. In PAROLE RECONSIDERATION cases, the accomplishments set forth in Section VI-B-1(a) of this policy shall ordinarily be considered as exceptional program or work assignment achievement where completion occurred since the preceding consideration for release on the sentence.

2. **Record of Exclusively Trivial Offenses** consists of misdemeanor offenses, ordinarily excluding offenses involving:

a. Possession, use, sale, attempted sale, distribution or attempted distribution of narcotics, controlled dangerous substances, or related paraphernalia;

b. Possession, use, sale or control of dangerous or deadly weapons;

c. Infliction or attempted infliction of bodily injury or harm; or

d. Destruction of public or private property.

3. **Substantial Crime-Free Period** is a period of at least five (5) years prior to commission of the instant offense(s) during which the offender was in the community, was not on escape, active parole or probation, and was not committed for more than thirty (30) days on any offense.

4. **Substantial Previous Period in Custody on Other Sentence(s) or Additional Committed Sentences** consists of:

a. A continuous period of at least five (5) years in custody on other sentence(s) immediately preceding the date the sentence for the instant offense(s) began; OR

b. A continuous period of at least five (5) years to be served on one or more additional sentences to incarceration which are consecutive to the instant sentence.

5. **Substantial Cooperation with the Government that Has Not Been Otherwise Rewarded** consists of documented special or unusual assistance to the Department of Corrections or another governmental agency during the period of incarceration which made an exceptional contribution to the health, welfare or safety of persons or property.

6. **Change in Availability of Community Resources Leading to Better Parole Prognosis** may apply when there is an opening or opportunity for an offender to participate in a program, service or other accommodation in the community that will meet the offender's identified need(s) and lead to reduced risk to the community and/or any other person. For example, a drug-dependent offender is accepted into an in-patient, residential or other highly structured program of drug treatment or rehabilitation.

7. **Poor Medical Prognosis** may occur when an offender has been diagnosed as terminally ill and/or is sufficiently debilitated that the likelihood of repeated criminal involvement, or risk to the community and/or any other person is minimal.

8. **Other Change in Circumstances** may occur when the capabilities or characteristics of an offender are altered or modified in ways that minimize the likelihood of repeated

criminal involvement, or risk to the community and/or any other person.

C. FACTORS COUNTERVAILING A RECOMMENDATION TO GRANT PAROLE:

1. **Repeated Failure Under Parole Supervision** consists of two (2) or more revocations of parole on the current sentence, OR three (3) or more revocations of parole on any sentence within the preceding five years. The term "parole supervision" as used in the Parole Guidelines is inclusive of other forms of conditional release including probation, bail, diversion programs or other community supervision.

2. **Ongoing Criminal Behavior** consists of:

a. Poor community adjustment as evidenced by failure to remain free of criminal activity over sustained periods of time; or

b. Acting in a leadership role in an organized, criminal venture, such as an organized drug distribution operation; or

c. A criminal record where the current conviction is at least the third (3rd) conviction for substantially similar offenses, OR at least the fourth (4th) conviction for dissimilar offenses.

3. **Lengthy History of Criminally-Related Alcohol Abuse** consists of at least five (5) convictions, including the current conviction, for criminal activity committed while under the influence of alcohol.

4. **History of Repetitive Sophisticated Criminal Behavior** consists of three (3) or more convictions, including the current conviction, for:

a. Serious crimes involving premeditation or methodical planning; or

b. Assaultive or fraudulent criminal behavior.

5. **Unusually Extensive or Serious Prior Record** consists of at least five (5) felony convictions for commission, or attempted commission, of any one or any combination of the following "crimes of violence notwithstanding that the offender lacked the capacity to commit the crime by reason of infancy, insanity, intoxication, or otherwise" (D.C. Code 3-401(3)):

a. Arson;

b. Assault, OR maliciously disfiguring another person, OR mayhem, OR manslaughter, OR murder;

c. Forcible sodomy, OR sodomy of a child less than 16 years of age, OR rape;

d. Kidnapping;

e. Riot;

f. Robbery;

g. Unlawful use of explosives.

6. **Instant Offense Involved Unusual Cruelty to Victims** may apply where the offense involved:

a. Physical, mental or emotional abuse beyond the degree needed to sustain a conviction on the instant offense; OR

b. Especially vulnerable victims, e.g., children or elderly persons were the victims of assaultive or fraudulent behavior.

7. **Repeated or Extremely Serious Negative Institutional Behavior** consists of one or more extremely serious disciplinary infractions, or multiple disciplinary infractions as described below that are sanctioned under Department of Corrections due process procedures.

a. In INITIAL PAROLE CONSIDERATION CASES, the following offenses shall ordinarily be considered as repeated or extremely serious negative institutional behavior:

(1) One or more Class I Offenses for murder, manslaughter, kidnapping, armed robbery, or first degree burglary at any time during the minimum sentence (see DCMR 28-502.3, May 1987); OR

(2) Two or more Class I Offenses as defined at DCMR 28-502.4 through 502.17 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

(3) One Class I Offense plus two Class II Offenses as defined respectively at DCMR 28-502.4 through 502.17, and 503.2 through 503.12 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

b. Assault, OR maliciously disfiguring another person, OR mayhem, OR manslaughter, OR murder;

c. Forcible sodomy, OR sodomy of a child less than 16 years of age, OR rape;

d. Kidnapping;

e. Riot;

f. Robbery;

g. Unlawful use of explosives.

6. **Instant Offense Involved Unusual Cruelty to Victims** may apply where the offense involved:

a. Physical, mental or emotional abuse beyond the degree needed to sustain a conviction on the instant offense; OR

b. Especially vulnerable victims, e.g., children or elderly persons were the victims of assaultive or fraudulent behavior.

7. **Repeated or Extremely Serious Negative Institutional Behavior** consists of one or more extremely serious disciplinary infractions, or multiple disciplinary infractions as described below that are sanctioned under Department of Corrections due process procedures.

a. In INITIAL PAROLE CONSIDERATION CASES, the following offenses shall ordinarily be considered as repeated or extremely serious negative institutional behavior:

(1) One or more Class I Offenses for murder, manslaughter, kidnapping, armed robbery, or first degree burglary at any time during the minimum sentence (see DCMR 28-502.3, May 1987); OR

(2) Two or more Class I Offenses as defined at DCMR 28-502.4 through 502.17 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

(3) One Class I Offense plus two Class II Offenses as defined respectively at DCMR 28-502.4 through 502.17, and 503.2 through 503.12 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

(4) Three or more Class II Offenses as defined at DCMR 28-503.2 through 503.12 (May 1987) during the 12 months preceding the hearing OR during the last half of the minimum sentence up to a period of three years, whichever is longer; OR

(5) Open charge(s) for new crime(s) committed during this sentence; OR

(6) New conviction(s) for crime(s) committed during this sentence.

b. In PAROLE RECONSIDERATION cases, the following offenses occurring since the preceding release consideration on the sentence shall ordinarily be considered as repeated or extremely serious negative institutional behavior:

(1) One Class I Offense for murder, manslaughter, kidnapping, armed robbery, or first degree burglary (see DCMR 28-502.3, May 1987); OR

(2) Two or more Class I Offenses as defined at DCMR 28-502.4 through 502.17 (May 1987); OR

(3) One Class I Offense plus two Class II Offenses as defined respectively at DCMR 28-502.4 through 502.17, and 503.2 through 503.12 (May 1987); OR

(4) Three or more Class II Offenses as defined at DCMR 28-503.2 through 503.12 (May 1987); OR

(5) Open charge(s) for new crime(s) committed during this sentence; OR

(6) New conviction(s) for crime(s) committed during this sentence.

c. In RESCISSION CONSIDERATION cases, a recommendation to grant parole may be countervailed for repeated or extremely serious negative institutional behavior where a point for negative institutional behavior was assessed in the most recent Parole Guideline computation.

8. **Lengthy History of Criminally-Related Substance Abuse** consists of at least five (5) convictions, including the current conviction, for criminal activity committed:

a. While under the influence of illegal substances, or illegal use of controlled substances; OR

b. Involving the illegal sale, distribution, purchase or possession of any narcotic drug, controlled dangerous substance or related paraphernalia.

9. **Absence of Community Resources Which Ensure Safety of the Community** consists of the unavailability of services necessary to support an offender's personal or community adjustment, and to minimize the risk to the community, any other person or the offender, e.g., the opportunity is not currently available to participate in an appropriate program to treat the offender's diagnosed emotional, mental or physiological disability or dependency.

Adopted by the Board of Parole on December 16, 1991.

Erias A. Hyman
Chairman

Appendix D:
1995 POLICY GUIDANCE

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF PAROLE
717 14TH STREET NW SUITE 300
WASHINGTON DC 20005

Policy Guideline

Subject: Definitions of Terms Used in Parole Guidelines

I. Authority: DCMR Title 28, Section 204 and Appendices 2-1 and 2-2, May 1987

II. Purpose: To define criteria and parameters for determining the applicability of descriptive terminology used in the Parole Guidelines for release decisionmaking, to facilitate consistency in Guideline application, and to provide each offender with information about the reason for the Board's decision in his or her case.

III. Applicability: All cases requiring Board action in which the Parole Guidelines are applied.

IV References: D.C. Department of Corrections Rules published at 28 DCMR Sections 502 and 503, May 1987; Board of Parole Policy Guideline regarding the establishment of dates for parole consideration, adopted on December 16, 1991. The Policy Guideline regarding the definitions of terms used in parole guidelines adopted by the Board on December 16, 1991 is superseded.

V. Rationale: Based on its own experience, expert opinion, and the views of the community, the Board's view is continually evolving on the factors that indicate whether an offender's release to parole is consistent with public safety. This Policy Guideline reflects the Board's current interpretation of the terms in the Parole Guidelines. It is not intended in any way to restrict the Board's discretion in individual cases. In order to more fully inform the offender whose case is being considered, the Board's Order to grant or deny parole will be accompanied by an explanation of that decision, along with these definitions of terms.

VI. Policy: The following definitions shall apply to Parole Guidelines terminology in the release decisionmaking process; however, the weight accorded to any applicable countervailing factor shall be at the discretion of the Board.

A. Factors Favoring Release

1. Point Assignment Grid Score (Numerical Risk Measurement) Favors Release Under Parole Guidelines.
2. Exceptional Program or Work Assignment Achievement
   a. Successful completion of appropriate educational or vocational programs or program levels which increased the likelihood the

offender will remain crime-free in the community, OR

b. Exceptional and sustained performance in one or more work details which increased the likelihood the offender will remain crime-free in the community, OR

c. maximum effort to participate in appropriate programs, but opportunities for programming were not available, and offender's programming needs can be met in the community.

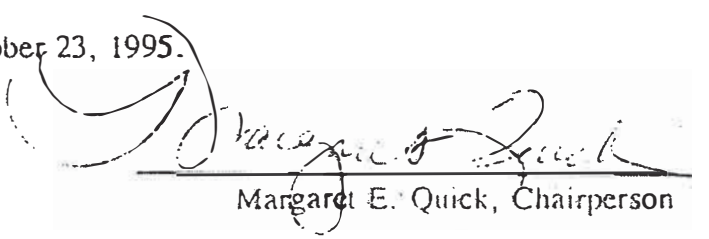
3. Record of Nonviolent Offenses
   a. criminal convictions have not involved injury or threat of injury to others
4. Substantial Crime-Free Period
   a. in the 5 years prior to committing instant offense, subject was not committed for more than 30 days on any offense, AND
   b. offender has otherwise demonstrated an ability to remain crime-free in the future
5. Substantial Previous Period in Custody on Other Sentences or Additional Committed Sentences.
   a. offender has demonstrated during this continuous period in custody, which included or will include other sentences, that he or she is ready to be paroled to the community or to his or her consecutive sentence
6. Substantial Cooperation with the Government
   a. documented special or unusual assistance to DCDC or another government agency which made an exceptional contribution to the health, welfare, or safety of persons or property
7. Availability of Community Resources Leading to Better Parole Prognosis
   a. an opening or opportunity for offender to participate in a program, service or other accommodation in the community, AND
   b. that will meet the offender's identified needs and lead to reduced risk to the community or another person
8. Poor Medical Prognosis
   a. terminally ill or sufficiently debilitated so that the likelihood of repeated criminal involvement or risk to the community or other person is minimal
9. Other Changes in Circumstances
   a. capabilities or characteristics of offender have changed in ways that minimize the likelihood of repeated criminal involvement, or risk to the community or other person

B. Factors Favoring Incarceration
   1. Point Assignment Grid Score (Numerical Risk Measurement) Favors Incarceration Under Parole Guidelines.
   2. Prior Failure Under Community Supervision

a. offender's prior negative conduct while under community supervision is likely to be repeated if again released to the community

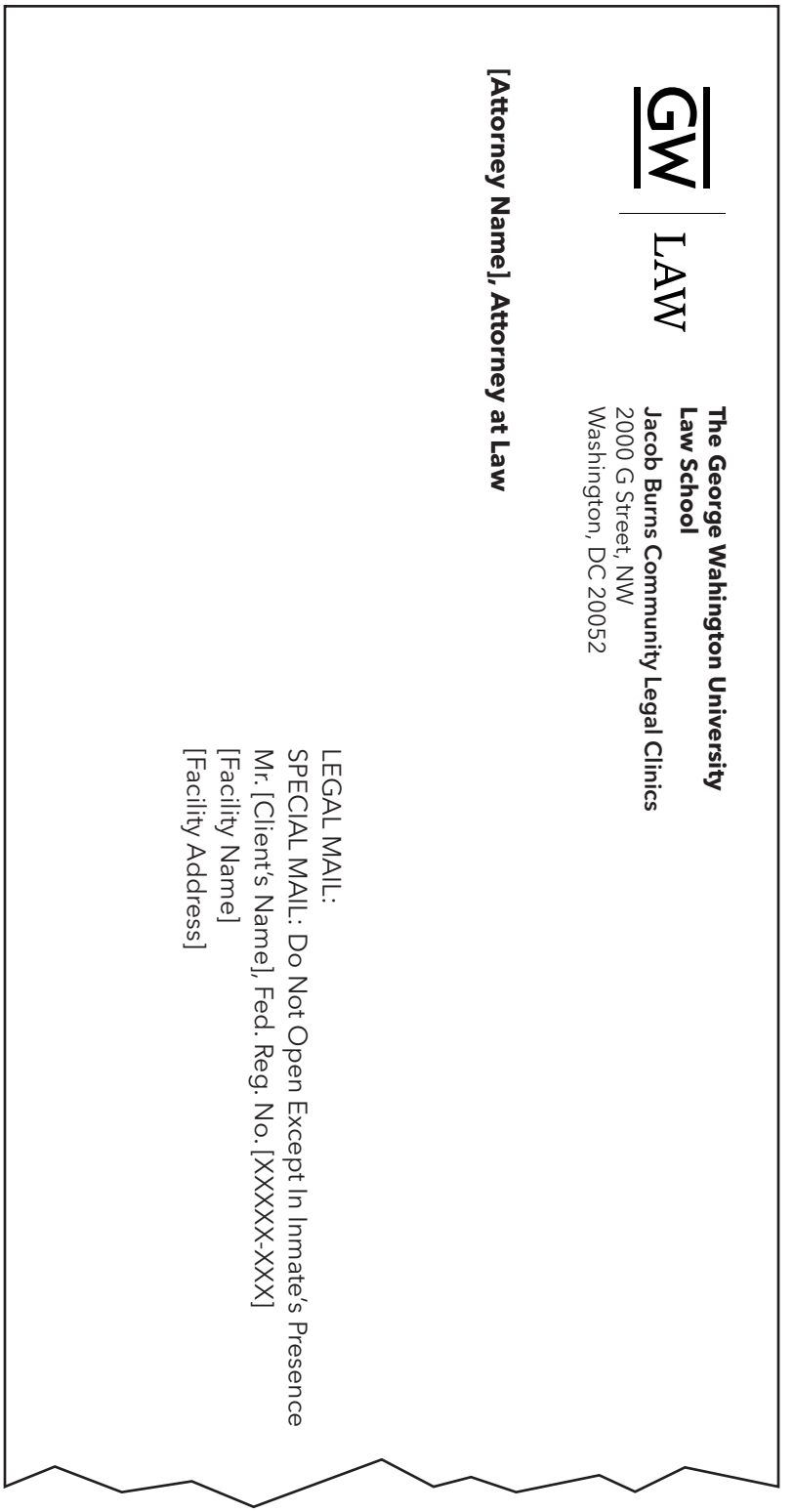
3. Ongoing or Repetitive Criminal Behavior
   a. failure to remain free of criminal activity over sustained periods of time, OR
   b. instant offense is similar to a prior offense and is likely to be repeated
4. Prior Record of Violent Behavior
   a. prior record of violent behavior that creates an unacceptable risk to public safety
5. Instant Offense Involved Unusual Cruelty to Victims
   a. physical, mental, or emotional abuse beyond the degree needed to sustain a conviction on the instant offense, OR
   b. especially vulnerable victims (for example, children or elderly persons victimized by assaultive, exploitive, or fraudulent behavior)
6. Serious Negative Institutional Behavior
   a. documented criminal conduct or breach of institutional rules, the severity, frequency, or recent occurrence of which indicates that subject is not ready to remain crime-free in the community
7. Opportunity but Little Effort to Engage in Productive Programming or Work
   a an opportunity for productive programming or work was made available by the Department of Corrections, parole officer, or other agency or employer, AND
   b. offender was able but failed to make appropriate use of that opportunity
8. Absence of Community Resources Which Ensure Safety of the Community
   a. unavailability of necessary services to support offender's personal or community adjustment, and minimize risk to the community, offender, or other person
9. Needs Programming to Remain Crime-Free in the Community
   a. offender requires appropriate programming to address the underlying cause of his or her criminal conduct and reduce the risk to the community

Adopted by the Board of Parole on October 23, 1995.



Margaret E. Quick, Chairperson

Appendix E:
LEGAL MAIL–SAMPLE ENVELOPE

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