

further supervision appears warranted, the Commission may inform the YCA parolee that he is continued on supervision because of its experience with similarly situated offenders.

[53 FR 49654, Dec. 9, 1988, as amended at 55 FR 289, Jan. 4, 1990. Redesignated at 63 FR 39176, July 21, 1998, and amended at 68 FR 41530, July 14, 2003]

§ 2.65 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

(a) *Applicability.* This regulation applies to all prisoners serving any combination of U.S. and D.C. Code sentences that have been aggregated by the U.S. Bureau of Prisons. Such individuals are considered for parole on the basis of a single parole eligibility and mandatory release date on the aggregate sentence. Pursuant to § 2.5, every decision made by the Commission, including the grant, denial, and revocation of parole, is made on the basis of the aggregate sentence.

(b) *Basic policy.* The Commission shall apply the guidelines at § 2.20 to the prisoner's U.S. Code crimes, and the guidelines of the District of Columbia Board of Parole to the prisoner's D.C. Code crimes.

(c) *Determining the federal guideline range.* The Commission shall first consider the U.S. Code offenses pursuant to the guidelines at § 2.20, and shall determine the appropriate number of months to be served (the prisoner's "federal time"). The Commission shall deem the "federal time" to have commenced with the prisoner's initial commitment on the current aggregate sentence, including jail time.

(d) *Decisions above the federal guideline range.* The "federal time" thus determined may be a decision within, below or above the federal guidelines, but it shall not exceed the limit of the U.S. Code sentence, *i.e.*, the number of months that would be required by the statutory release date if the U.S. Code sentence is less than five years, or the two-thirds date if the U.S. Code sentence is five years or more. The D.C. Code criminal behavior may not be used as an aggravating offense factor, but may be used as predictive basis for exceeding the federal guideline range

to account for the actual degree and/or seriousness of risk.

(e) *Scheduling the D.C. parole hearing.* The Commission shall then schedule a D.C. parole hearing to be conducted not later than four months prior to the parole eligibility date, or the expiration of the "federal time," whichever is later. At the D.C. parole hearing the Commission shall apply the point score system of the D.C. Board of Parole, pursuant to the regulations of the D.C. Board of Parole, to determine the prisoner's suitability for release on parole.

(f) *Granting parole.* In determining whether or not to grant parole pursuant to the point score system of the D.C. Board of Parole, and the length of any continuance for a rehearing if parole is denied, the Commission shall presume that the eligible prisoner has satisfied basic accountability for the D.C. Code offense behavior. However, the Commission retains the authority to consider any unusual offense circumstances pursuant to 28 DCMR 204.22 to deny parole despite a favorable point score, and to set a rehearing date beyond the ordinary schedule. The Commission shall also consider whether the totality of the prisoner's offense behaviors (U.S. and D.C. Code) warrants a continuance to reflect the true seriousness or the degree of the risk that the release of the prisoner would pose for the public welfare. Nonetheless, the Commission shall not deny parole or order a continuance, solely on the ground of punishment for the U.S. Code offenses standing alone, or on grounds that have been adequately accounted for in a decision to exceed the federal guideline range.

(g) *Hearings.* The Commission shall, in accordance with § 2.12 of these regulations, conduct an initial hearing to determine the federal time. This portion of the decision shall be subject to appeal pursuant to § 2.26 of these regulations. A D.C. parole hearing to determine the prisoner's suitability for parole under the D.C. guidelines shall be conducted as ordered at the initial hearing. Prior to the D.C. parole hearing, statutory interim hearings shall be conducted pursuant to § 2.14 of these regulations, including an interim hearing at eligibility on the aggregate sentence if no other interim hearing would

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be held. After the D.C. parole hearing, rehearings shall be conducted pursuant to the rules and policy guidelines of the D.C. Board of Parole, if release on parole is not granted.

(h) *Revocation decisions.* Violations of parole are violations on the aggregate sentence, and a parole violation warrant is therefore issued under the authority of the aggregate sentence. With regard to the reparole decision, the Commission shall follow the guidelines at §2.21 of these rules, but rehearings shall be scheduled according to the guidelines of the D.C. Board of Parole.

(i) *Forfeiture of street time.* All time on parole shall be forfeited if required under §2.52(c) of these regulations. If not, the Commission shall divide the total time on parole (street time) according to the proportional relationship of the D.C. sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the D.C. sentence pursuant to D.C. Code 24-406(a). For example, if the prisoner is serving a two-year D.C. Code sentence and a three-year U.S. Code sentence, the D.C. sentence is two-fifths, or 40 percent, of the total aggregate sentence. If he was on parole 100 days, he therefore forfeits 40 days. “Street time” is measured from the date of release on parole to the execution of the warrant or confinement on other charges.

[54 FR 27842, June 30, 1989, as amended at 57 FR 41395, 41396, Sept. 10, 1992. Redesignated at 63 FR 39176, July 21, 1998, and amended at 68 FR 41530, July 14, 2003]

§2.66 Revocation decision without hearing.

(a) If the releasee agrees to the decision, the Commission may make a revocation decision without a hearing if—

(1) The alleged violation would be graded no higher than Category Two under the guidelines at §2.20;

(2) The alleged violation is in any category under the guidelines at §2.20 and the decision imposes the maximum sanction authorized by law; or

(3) The Commission determines that the releasee has already served sufficient time in custody as a sanction for the violation but that forfeiture of time on parole is necessary to provide an adequate period of supervision.

(b) A releasee who agrees to such a disposition shall indicate such agreement by—

(1) Accepting the decision proposed by the Commission in the Notice of Eligibility for Expedited Revocation Procedure that the Commission sent to the releasee, thereby agreeing that the releasee does not contest the validity of the charge and waives a revocation hearing; or

(2) Offering in writing, before the finding of probable cause or at a probable cause hearing, not to contest the validity of the charge, to waive a revocation hearing, and to accept a decision that is at the bottom of the applicable guideline range as determined by the Commission if the violation would be graded no higher than Category Two under the guidelines at §2.20, or is the maximum sanction authorized by law.

(c) An alleged violator’s agreement under this provision shall not preclude the Commission from taking any action authorized by law or limit the statutory consequences of a revocation decision.

[72 FR 53115, Sept. 18, 2007]

Subpart B—Transfer Treaty Prisoners and Parolees

§2.68 Prisoners transferred pursuant to treaty.

(a) *Applicability, jurisdiction and statutory interpretation.* (1) Prisoners transferred pursuant to treaty (transferees) who committed their offenses on or after November 1, 1987, shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106A. Transferees who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to procedures found at 28 CFR 2.13. The Parole Commission shall treat the foreign conviction as though it were a lawful conviction in a United States District Court.

(2) The jurisdiction of the Commission to set a release date and periods and conditions of supervised release extends until the transferee is released from prison or the transferee’s case is otherwise transferred to a district