

THE LAW OFFICES OF

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SAN FRANCISCO PHILADELPHIA

PRACTICE LIMITED TO FEDERAL CRIMINAL LAW

REPLY TO:

**AN INTRODUCTION TO THE FEDERAL PAROLE SYSTEM:
WHAT EVERY PRISONER SHOULD KNOW**

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I. INTRODUCTION

Virtually no federal prisoner serves his entire sentence actually confined in prison. Unless earlier paroled, the prisoner will be mandatorily released from prison 180 days before the scheduled end sentence, and the usual prisoners' stay will be further reduced by the two types of goodtime: statutory goodtime and extra goodtime (also called meritorious goodtime, camp time and industry time).

Nearly all federal prisoners, except those serving time under Continuing Criminal Enterprise (CCE) sentences, become eligible for parole. A prisoner may be released as soon as he becomes eligible for parole, and prisoners with sentences of five years or longer must be paroled after serving two-thirds of their sentences in prison. Two-thirds of the sentence is roughly equal to total sentence minus normal goodtime deductions.

A. Parole: What Is It?

Parole, like probation, is a grant of conditional liberty. It occurs when a prisoner after serving some portion of his sentence is allowed to serve the remainder of his full sentence in the community. A former prisoner on parole remains under the jurisdiction of the United States Parole Commission (the "Commission") until the expiration of the maximum term to which he was sentenced. Thus, although free to live and work in the community, the parolee must obey conditions imposed on him by the Commission. Failure to do so could mean revocation of parole and return to prison where he will be required to serve all or part of the remainder of his sentence.

II. FEDERAL PAROLE

Usually, a federal prisoner may not be released prior to the expiration of his sentence except by order of the Commission. In order to obtain release, a

prisoner who is eligible will be given a hearing before a panel of Commission hearing examiners, who regularly visit the various federal prisons every other month. The prisoner may be represented at this hearing by the person of his choice to speak on his behalf. This representative can be, but doesn't have to be, a lawyer.

At the hearing, after discussing the case with the prisoner, the examiners will determine the prisoner's parole guidelines, and will recommend to the Regional Office of the Commission whether and when the inmate should be paroled. This tentative release date is subject to modification either upward or downward.

Within 21 days, the Regional Commissioner will send a Notice of Action to the prisoner notifying him of the official decision in his case. This decision may then be appealed administratively to the National Appeals Board of the Commission.

After exhausting the administrative appeal, the prisoner may challenge the Commission's decision in federal court, through a petition for writ of habeas corpus, commonly called a "2241" petition.

A prisoner's case will be reheard at statutorily-mandated interim hearings, until he is released on parole or at the mandatory release date.

A. Parole Eligibility

Parole eligibility is a requisite if the Commission is to release an inmate. The type of sentence an inmate is serving determines when he is eligible for parole: thus, eligibility is set by the sentencing judge but affects the inmate throughout his relationship with the Commission. The various types of adult sentences a judge may impose and the parole eligibility

times which correspond to them are described in 18 U.S.C. §4205. The adult sentences generally fall into the following categories:

<u>Description</u>	<u>Statute</u>	<u>Eligibility for Parole</u>
Regular Adult	18 U.S.C. §4205	After completing 1/3 term or terms, or after completing 10 years of a life sentence or of a sentence over 30 years.
"b-1"	18 U.S.C. §4205(b)(1)	At a time designated by the sentencing judge, which may not be later than 1/3 of the sentence imposed.
"b-2"	18 U.S.C. §4205(b)(2)	Eligible for release immediately

As above indicated, a federal offender usually becomes eligible for parole after serving one-third of his sentence, or less, or even immediately after commencement of his sentence. However, because initial parole hearings need to be conducted only "within 120 days of a prisoner's arrival at a federal institution or as soon thereafter as practicable", in practice no prisoner is released immediately. The standard application of the parole guidelines discussed below also operates to foreclose the possibility of immediate release.

Life terms of sentences of 30 years or longer must become eligible after service of 10 years, but not before.

Of course, not all inmates are released at their eligibility date. Indeed, a good number of inmates are never released on parole but instead serve their entire sentence less goodtime. The release decision depends on a variety of factors of which eligibility is a necessary, but not the only consideration.

B. Parole Guidelines

The Parole Reorganization Act provides a framework for the release determination. The parole date is figured by calculating, first, the defendant's offender characteristics/parole prognosis/ salient factor score and, second, the severity of the offense. Once these two items are determined, the Parole Commission guideline chart will show a range of months which will generally be served prior to release on parole. These "guidelines" indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time range as specified by the guidelines is established specifically for cases with good institutional adjustment and program progress. However, where aggravating or mitigating circumstances warrant, decisions outside of the guidelines, either above or below, may be rendered. The guidelines appear on a chart which measures two factors: (1) offense severity level and (2) salient factor score.

There are eight offense severity levels ranging from category one or lowest severity, through category eight or highest. The "offense severity" levels subjectively measure the relative seriousness of the crime for which the defendant was convicted. All offenses are indexed according to one of the eight offense severity categories.

The second component of the guidelines system is called the "salient factor score," which is intended to be clinically predictive indicating the likelihood of the inmate's favorable parole prognosis. The salient factor score primarily measures the defendant's criminal history, and other statistically relevant factors. It is based on a 10-point evaluation system which, conversely to the offense severity categories, rewards "very good"

parole prognosis with a score of 8 to 10, with poorer parole prognosis afforded a lower point total.

C. The Initial Parole Hearing

Timing of the initial parole hearing can be a key factor in the outcome of any decision and should be considered by the inmate and his attorney as part of their strategy. However, an inmate is entitled to an initial parole hearing within 120 days of his arrival at a federal institution, or as soon thereafter as is practical. There are three exceptions to this rule: (1) a prisoner who is not eligible for parole for ten years or longer does not have a right to an initial hearing until at least 90 days prior to the completion of such minimum term, or as soon thereafter as is practical; (2) a federal prisoner serving concurrent state and federal sentences in a state institution is given an in-person hearing as soon as feasible after his arrival at a federal institution; and (3) a prisoner who is serving a federal sentence exclusively, but is being boarded in a state or local institution, may receive a federal parole hearing at the state or local institution, or may be transferred to a federal institution for a hearing.

Application for this initial hearing is made when the inmate completes the appropriate application form and an Inmate Background Statement. He may also waive parole consideration as part of an overall strategy and apply later. At least 60 days prior to the hearing, the prisoner must be provided with written notice of time and place of the hearing and of his right to review documents considered by the Commission. These documents include the pre-sentence investigation report (PSI), the USA 792 form, and the AO-235 form. These last two forms are sent by the U.S. Attorney's Office and the sentencing judge,

respectively, and they reflect, among other things, the prosecutor and judge's recommendations as to when parole should be granted. Documents from the Regional Parole File will be disclosed to him within 40 working days of his request. Documents in an Inmate's Institutional File will be disclosed to him within 15 calendar days of his request. Diagnostic opinions, confidential material, and material which, if disclosed, might result in harm to another are exempt from disclosure. In such cases, the Commission and the Bureau of Prisons are required to identify what material is being withheld and summarize its contents.

The prisoner's parole representative is then permitted to review the disclosable portions of his client's file within 30 days of the initial parole hearing.

Several hearing examiners visit each federal prison every two months to conduct parole hearings. The purpose of the hearing is for the examiners to discuss an inmate's background with him, determine guidelines, and recommend a parole date to the Regional Commissioner. Hearings are conducted in small rooms at the institution and are tape recorded. Present are two hearing examiners from the Commission, the inmate, his case manager, and, if he wishes, a representative to speak on his behalf. This representative may be a relative or friend, a fellow inmate, a member of the institution staff, an attorney, or parole specialist. Representatives are not permitted to act in an adversarial capacity by participating in the questioning or advising the inmate during the course of the hearing, but may simply make a short statement at the end of the hearing. Representatives, of course, can aid an inmate in preparing for the hearing. An attorney/representative can, also, often identify problem areas that might arise during the hearing and recommend legal action to be taken to prevent this.

The hearing usually starts when the examiners introduce themselves and explain both the hearing and appeal procedures to the inmate. One, or occasionally both, of the examiners questions the inmate about his crime, background, institution record and activities, and release plans with an eye toward guidelines calculations. At this time the examiners usually, but not necessarily, advise the inmate of their tentative guideline evaluation.

The Parole Commission has recently implemented a pre-hearing assessment procedure under which the inmate's case file is analyzed several weeks before the actual hearing. This is not, however, a required procedure. When pre-hearing assessments are done, however, inmates sometimes are given written notice, before their hearings, of the examiners' initial assessment of their guidelines. This initial guidelines assessment is, of course, subject to change at the hearing, but is considered by the examiners.

After permitting the inmate to speak, the examiners ask the representative if he wishes to make a statement. After all statements have been made, the representative and the inmate leave the room while the examiners confer; the case manager remains in the hearing room.

The inmate and representative are then asked to return to the room, at which time the examiners state what their recommendation to the Regional Commission will be.

The Pre-Sentence Investigation (PSI) is the document upon which the Commission relies most heavily. The PSI is a report prepared by a probation officer at the judge's request prior to sentencing, and it can contain a summary of the inmate's prior criminal, medical, family and employment record as well as a description of the current offense behavior. This description is commonly called the "prosecution version." It is this version of the offense that the examiners generally look at in determining a prisoner's "offense severity" score.

D. The Notice of Action

The examiners may recommend one of three dispositions to the Commission's Regional Officer: (1) an effective parole date within six months of the hearing; (2) a presumptive release date (either by parole or by mandatory release) more than six months after the hearing; (3) a "set-off" or continuation for a ten-year reconsideration hearing if the projected mandatory release date is within 10 years of the hearing date. The Regional Commissioner may accept their recommendation, modify or reverse it if it is outside the guidelines range, or modify it to bring it to a date not to exceed six months from the recommended date, or refer the case to the National Commissioners for further consideration.

The Regional Office must inform the inmate of its decision within 21 days of the date of the hearing, usually on a form called a "Notice of Action." If parole is denied or a release date in excess of six months from the date of the hearing is set, the prisoner must also receive in writing a statement outlining the reasons for this decision. Similarly, if a decision outside of the guidelines is made, the Commission must advise the inmate in writing of the specific factors and information relied upon for departing from the guidelines.

The Commission's decision is normally based to a great extent on information contained in the prisoner's PSI, especially that section called the "prosecution version." The description included in the PSI of the prisoner's offense having been usually provided by the prosecutor, may be inaccurate and heavily biased against the prisoner. Thus, a prisoner's representative at the parole hearing will normally have to supplement the Commission's file with accurate information, and challenge any incorrect information, and take further legal action to have the PSI corrected.

If inaccurate information in the PSI is identified, and it should be before the hearing, an attempt to have the sentencing judge order corrections is advised. This may require making a motion pursuant to 28 U.S.C. §2255 asking that the sentence be vacated due to the fact that it was based on inaccurate information; or in the alternative, for a correction of the PSI pursuant to F.R.Crim.P. 32. Once the corrections are accepted, the Parole Commission should be notified.

A prisoner may dispute the accuracy of any information in his file. The Commission must resolve such disputes by the "preponderance of the evidence" standard. Note, of course, that the Commission has a great deal of discretion in its decision to grant or deny parole, and challenges to the Commission's use of erroneous information are not necessarily effective. It is, thus, best to have the sentencing judge issue an order directing that the PSI be corrected if such inaccuracies are contained in the report.

E. Appeals and Further Proceedings

1. Administrative Appeal

With few exceptions, any decision made by the Parole Commission may be appealed administratively by the inmate. Submission of a written appeal by the inmate to the National Appeals Board must occur within 30 days of the entry of the decision. In practice, this means within 30 days of the date on the Notice of Action, regardless of when the inmate received the Notice. The Commission has provided, however, that since Notices of Action are not typically date stamped in the institution, any appeal received within 45 days of the date of the Notice of Action will be accepted. If no appeal is filed within this time period, however, the decision rendered stands as the final decision of the Commission.

The grounds for appeal specified by the Commission are:

- That the guidelines were incorrectly applied.
- That a decision outside the guidelines was not supported by the reasons or facts as stated.
- That especially mitigating circumstances justify a different decision.
- That a decision was based on erroneous information and the actual facts justify a different decision.
- That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred.
- That there was significant information in existence but not known at the time of the hearing.
- That there are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

The National Appeals Board must inform the inmate in writing of its decision and the reasons for it within 60 days of receipt of the appeal; however actual response time is often longer. The National Appeals Board may affirm, reverse or modify the decision or order a rehearing. No appeal may result in a decision more adverse to the inmate.

The National Appeal must be submitted to the Regional Office, which then transmits it to Washington, D.C., along with the prisoner's case file. Forms are available from the prisoner's case manager for the appeal. Representatives may, and often do, submit a memorandum along with the form in support of and explaining the issues raised on appeal.

2. Interim Hearing

If the prisoner is not released soon after his initial parole hearing, he is statutorily granted "interim" review hearings. An inmate will have an interim hearing every 18 months if he is serving a sentence of less than seven

years, or every 24 months if he is serving a sentence of seven years or more. However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing will be deferred until the docket of hearings immediately preceding the month of parole eligibility. The purpose of these hearings is to consider any "significant developments or changes" that may have occurred in the prisoner's status subsequent to the initial hearing.

Following interim hearing, the Commission may: (1) order no change in the previous decision; (2) advance a presumptive release date because of superior program achievement or other exceptional circumstances; (3) retard or cancel parole for disciplinary reasons; or (4) if the presumptive release date falls within six months of the interim hearing, it may be treated as a pre-release review.

It is the policy of the Commission that a presumptive parole date may be advanced only for sustained superior program achievement or other clearly exceptional circumstances. It is the intent of the Commission to encourage meaningful voluntary program participation, not superficial attendance in programs merely in an attempt to impress the parole decision-makers. Therefore, the advancements permitted for superior program achievement are deliberately kept modest.

3. Pre-Release Review

Pre-release reviews are a special type of interim hearing, held at least 60 days prior to a presumptive release date in order to determine "whether the conditions of a presumptive release date by parole have been satisfied," that is, whether the inmate has maintained a satisfactory institutional conduct record since his last hearing and whether release plans are in order. After a pre-release review, the Regional Commissioner may exercise one of the first three options described above, or he may approve the parole date but advance

or retard it for purposes of development and approval of release planning. A parole rescission hearing may be ordered where misconduct appears to be present. Decisions to rescind or retard parole are sanctions employed by the Commission to assist the Bureau of Prisons in the maintenance of institutional discipline. Guidelines for these decisions have been enacted by the Commission.

4. Case Reopening

Any finally-decided case may be reopened by the Regional Commissioner upon receipt of new information of "substantial significance." There are six grounds for reopening a case: (1) receipt of favorable information which is "clearly exceptional"; (2) receipt of new adverse information; (3) institutional misconduct; (4) new or additional sentences; (5) convictions after parole revocation; and (6) changes in or insufficiency of release plans. When a case is reopened, the inmate receives a "special reconsideration hearing."

The Bureau of Prisons may petition for a reopening of the case and consideration for parole prior to the date previously set, for good cause, such as, emergency, hardship, or other extraordinary circumstances.

In addition, an inmate may receive reductions from his presumptive parole date based upon "superior program achievement" beyond the normally good institutional record which is almost always a prerequisite to parole release. The maximum permissible reductions range from 1 month for inmates who have received original presumptive parole dates of 15 to 22 months, to as much as 13 months for inmates with presumptive parole dates of 91 months or more. Partial reduction under the maximum for which the inmate is eligible may be

given if, for example, an inmate with superior program achievement is subject to a minor disciplinary infraction.

F. Release on Parole

An inmate may be paroled "to the street", to a state, local, or immigration detainer, or to a community treatment center (CTC). Once "on the street" he will remain under the jurisdiction of the Commission and under the supervision of a probation officer until the end of his sentence term or until the Commission terminates its jurisdiction. Parolees who have a salient factor score of 8 or better will normally be terminated after two years of supervision without new criminal conduct or serious violation; parolees with a lesser salient factor score will be released after three such years. After five years of supervision in the community, the Commission must terminate jurisdiction unless it finds, after a hearing, that there is a likelihood of further crime.

An inmate must have appropriate release plans made before he embarks on parole. Once on parole he must comply with any conditions imposed upon him by the Commission. These conditions include, but are not limited to, that the parolee report to this probation officer, not associate with persons having a criminal record, not act as an informer, not possess weapons, remain employed, not use drugs, and not use alcohol to excess. In addition, restrictions on parolee travel may be imposed.

Parole may be revoked at any time if the parolee violates the conditions of release embodied in his particular parole contract. Revocation of parole can result in reincarceration for all or a portion of the inmate's parole term, i.e., the portions of the sentence term remaining when he was released

on parole. This is true regardless of the time that the revocation or the violation occurs.

Following revocation, a parolee receives credit for time under supervision in the community unless convicted of a crime committed while under supervision. A parolee who has absconded from supervision is credited with the time and the date of release to supervision to the date of such absconding.