



**United States Parole Commission - USPC–2015-01**  
***Comments to Notice of Proposed Rulemaking Regarding***  
***Paroling, Recommitting, and***  
***Supervising Federal Prisoners:***  
***Prisoners Serving Sentences Under***  
***the United States and District of***  
***Columbia Codes***

Federal Register, Vol. 80, No. 114 (Monday, June 15, 2015)

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August 14, 2015

On behalf of the DC Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs, we present the following comments to the United States Parole Commission (USPC or Parole Commission) in response to the Notice of Proposed Rulemaking for "Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes," published in the *Federal Register*, Vol. 80, No. 114 (Monday, June 15, 2015).

The Proposed Rule is a significant and welcome change in the way the Parole Commission will evaluate DC offenders whose offense occurred prior to early March, 1985 and who have never been paroled on their offense. However, we have several concerns that we strongly urge the Parole Commission to address prior to adopting and implementing its final rule.

**Timeliness of USPC Implementation –the need for remedial hearings under the 1972 Guidelines**

It is of great concern that the Parole Commission does not plan to hold remedial hearings for individuals who have previously been heard under the 2000 United States Parole Commission Guidelines, but who meet the criteria to be heard under the 1972 DC Board of Parole Guidelines. The Proposed Rule requires individuals to wait until "their next regularly scheduled hearing" before they can receive the benefit of being evaluated under the guidelines that were in place when they committed the offense. Ordinarily, individuals who are denied parole under the 2000 USPC Guidelines will receive a parole rehearing after three years. However, the Parole Commission can extend the rehearing date up to five years for certain offenses. Therefore, individuals who were presumed unsuitable for parole under the 2000 USPC Guidelines may thus be required to wait as long as five years after the current rulemaking is finalized to receive their first parole hearing under the 1972 DC Board of Parole Guidelines. By failing to offer a prompt

remedial hearing under the 1972 DC Board of Parole Guidelines to those prisoners who were previously heard under the 2000 Guidelines, the USPC will be compounding the damage it has already caused and further illegally extending periods of incarceration

Additionally, the Proposed Rule contradicts the Parole Commission's own practice in promulgating similar guidelines. In 2009, the USPC adopted rules in partial response to the Sellmon litigation, in which it was contended that the USPC had improperly applied its 2000 guidelines to prisoners who had committed crimes after March 3, 1985 and before August 5, 1998. Under the 2009 final rule, the 1987 Board guidelines were to be applied to those prisoners. See 74 Fed. Reg. 58540-44 (Nov. 13, 2009). In addition to providing that regularly scheduled future parole hearings for those individuals would be held under the 1987 guidelines, the 2009 rule specifically provided for a "record review or hearing" at which "the hearing examiner will evaluate the prisoner for parole under the 1987 Board guidelines." 74 Fed. Reg. at 58541. See also id. at 58542 (referring to "remedial hearing" to be "conducted using the 1987 Board guidelines for making a release decision at an initial hearing").

### **Remedial Hearing Procedure**

During remedial hearings conducted after the 2009 Rule was implemented, the Parole Commission reevaluated past parole decisions using the DC Board of Parole Guidelines. The Parole Commission determined what the outcome would have been at each prior parole hearing if the DC Board of Parole Guidelines had been applied instead of the 2000 USPC Guidelines. The individuals who will be affected by the current Proposed Rule should receive the same opportunity to review past parole decisions. Many individuals who did not meet the suitability criteria under the 2000 USPC guidelines at past parole hearings may well have met the suitability criteria under the 1972 DC Board of Parole Guidelines. These individuals should be afforded the opportunity to have their past parole hearings reconsidered under the 1972 DC Board of Parole Guidelines.<sup>1</sup>

### **Timeline for Parole Reconsideration Hearings**

As discussed above, individuals who are denied parole under the 2000 United States Parole Commission Guidelines ordinarily receive a parole rehearing after three years (and sometimes after five). This guideline for rehearings significantly increases the amount of time an offender must wait before receiving another parole hearing compared to the 1972 guidelines. Under the 1972 DC Board of Parole Guidelines, individuals who are not granted parole ordinarily received a rehearing after one year. See D.C. Rules and Regulations, 9 DCRR 103 (1972). The Proposed Rule does not discuss the rehearing timeline criteria it intends to implement. Consistent with the 1972 Guidelines, the final rule should provide that prisoners who are denied parole receive a parole rehearing after one year.

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<sup>1</sup> As it did with respect to the 2009 Sellmon-related rules, the USPC may wish to conduct a paper review of prior hearing records before conducting a remedial rehearing, since some individuals may well be determined eligible for parole based on such a paper review and without an actual rehearing.

## **Eligibility Criteria**

The Proposed Rule proposes to utilize the 1972 DC Board of Parole Guidelines for DC offenders who meet the following criteria: 1) the offense occurred “before March 3, 1985”; 2) the prisoner is not incarcerated on a parole violation; and 3) the prisoner has not been granted a parole effective date. 80 Fed. Reg. at 34112. The 2009 rule applying the 1987 guidelines covers individuals who committed crimes “after March 3, 1985.” 74 Fed. Reg. at 58541. Unless the eligibility under the Proposed Rule is altered slightly, the net effect would be that individuals who committed their offense on March 3, 1985 would have the 2000 guidelines applied to them, even though those who committed crimes the day before or after would have the 1972 or 1987 guidelines applied. Therefore, the Parole Commission should adjust the criteria for application of the 1972 guidelines to read “on or before March 3, 1985” instead of “before March 3, 1985” to avoid excluding any individuals who committed their offense on March 3, 1985.

## **Notice to Affected Individuals**

The Rulemaking fails to address the issue of notification. The USPC should require BOP institutions to provide notice of the final rulemaking to eligible prisoners. The Parole Commission and the BOP are the custodians of this information and the only entities with the ability to determine affected individuals. In addition to notifying affected individuals of the change, BOP and contract facilities should maintain copies of the 1972 Guidelines and the criteria that will be used to evaluate DC offenders at future hearings. Without notification and access to these documents, individuals will not adequately be able to prepare for future parole hearings.

## **Including Statutory Criteria for Parole**

The Proposed Rule fails to include the statutory criteria for parole that are discussed in the 1972 Guidelines. The USPC should include in its final rule the statutory criteria found in the 1972 Guidelines. See D.C. Rules and Regulations, 9 DCRR 105 (1972). Under these criteria, parole should be granted when the Board of Parole finds: 1) a reasonable probability the prisoner will live and remain at liberty without violating the law; 2) the prisoner’s release is not incompatible with the welfare of society; and 3) the prisoner has served the minimum sentence imposed or the prescribed portion of his sentence as the case may be. Id. Under the 1972 DC Board of Parole Guidelines, granting parole included the statutory criteria listed above that the Board could rely upon to authorize a prisoner’s release on parole.

The statutory criteria should be included, in addition to the “Factors Considered” listed in the Proposed Rule. The statutory criteria are important to receiving a proper parole determination using the 1972 regulations and are not included in the factors considered, as listed in the Proposed Rule. The final rule should include the statutory criteria for parole determinations to appropriately apply the 1972 regulations.

## **Including Specific Reasons for Denying Parole and Outlining Necessary Steps in Future Parole Hearings**

The final rule should also provide that at future parole hearings, the Parole Commission should give detailed and personal reasons for denying parole and outline the steps that individuals need to take in order to demonstrate they are ready for parole. By providing more detailed and personal responses, the Parole Commission would help prisoners take positive steps toward meeting the parole criteria.